S. Hrg. 99-650

CULTURAL PROPERTY REPOSE ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
PATENTS, COPYRIGHTS AND TRADEMARKS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 1523

A BILL TO AMEND TITLE 28 OF THE UNITED STATES CODE TO SET UP A REGIME OF REPOSE FOR CERTAIN ARCHEOLOGICAL AND ETHNOLOGICAL MATERIAL AND CULTURAL PROPERTY

JANUARY 9, 1986

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CONTENTS

OPENING STATEMENT

Page

Mathias, Hon. Charles McC., Jr., a U.S. Senator from the State of Maryland, chairman, Subcommittee on Patents, Copyrights and Trademarks 1

PROPOSED LEGISLATION

S. 1523, a bill to amend title 28 of the United States Code to set up a regime of repose for certain archeological and ethnological material and cultural property 3

CHRONOLOGICAL LIST OF WITNESSES

Panel consisting of John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice, Washington, DC; Ely Maurer, Assistant Legal Adviser, Department of State, Washington, DC; and Thomas E. Harvey, general counsel and congressional liaison, U.S. Information Agency, Washington, DC 8

Panel consisting of James D. Burke, director, St. Louis Art Museum, St. Louis, MO, and Peter C. Marzio, director, Houston Museum of Fine Arts, Houston, TX 43

Panel consisting of William Bright Jones, president, International Foundation for Art Research, New York, NY, and Dr. Mark P. Leone, Society for American Archaeology, Washington, DC, accompanied by Dr. Philip Speser 61

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Burke, James D.:
    Testimony 43
    Prepared statement 45
Harvey, Thomas E.:
    Testimony 25
    Prepared statement 26
Jones, William Bright:
    Testimony 61
    Prepared statement 64
    Letter to Hon. Charles McC. Mathias, Jr., March 26, 1986 68
Keeney, John C.:
    Testimony 8
    Prepared statement 9
Leone, Mark P.:
    Testimony 69
    Prepared statement 71
    Letter to Hon. Charles McC. Mathias, Jr., from Audrey Porsche, associate director, Washington Office, Society for American Archaeology 77
        Enclosure: "Ancient Art at Prices That Aren't Out of Sight," article from the Business Week, January 20, 1986 78
Marzio, Peter C.:
    Testimony 47
    Prepared statement 49
Mathias, Senator Charles McC., Jr.: Statement of the Government of Peru 37
Maurer, Ely:
    Testimony 15
    Prepared statement 17

Page

Speser, Philip:
  Testimony 80
  "The Convention on Cultural Properties Implementation Act," student paper 81

APPENDIX

STATEMENTS

Testimony submitted by Paul N. Perrot, director, Virginia Museum of Fine Arts, Richmond, VA 91
Statement of the American Association of Museums, March 4, 1986 95

CORRESPONDENCE

Letter to Hon. William H. Webster, Director, FBI, from Senator Charles McC. Mathias, Jr., Subcommittee on Patents, Copyrights and Trademarks, February 5, 1986 98
Letter to Hon. Charles McC. Mathias, Jr., from William H. Webster, Director, FBI, April 21, 1986 100
Letter to the Senate Judiciary Committee, Subcommittee on Patents, Copyrights and Trademarks, from Toni D. Drake, Legislative Research Assistant, Congressional Research Service, The Library of Congress, May 16, 1986 102
  Enclosure: List of State Statutes of Limitation for the Detention of Personal Property 103

CULTURAL PROPERTY REPOSE ACT

THURSDAY, JANUARY 9, 1986

U.S. Senate,
Committee on the Judiciary,
Subcommittee on Patents, Copyrights and Trademarks,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the subcommittee), presiding.

Staff present: Steven J. Metalitz, chief counsel and staff director; Sharon M. Donovan and Diana Gilbert, staff assistants; Pamela Batstone, chief clerk; and Carl W. Hampe, counsel for Senator Simpson.

OPENING STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND, CHAIRMAN, SUBCOMMITTEE ON PATENTS, COPYRIGHTS AND TRADEMARKS

Senator **Mathias**. The committee will come to order.

We will make history today by opening the first subcommittee hearing of the new year. Today, the Subcommittee on Patents, Copyrights and Trademarks takes up Senate bill 1523, the Cultural Property Repose Act.

This legislation, which Senator Bentsen and I introduced last summer, has been referred to this subcommittee because of jurisdiction over international law questions. It has also been referred to the Subcommittee on Courts.

The Cultural Property Repose Act attempts to reduce the uncertainties inherent in the ownership of art, artifacts, and other cultural property. These uncertainties arise from diverse notions of ownership, and, I suppose, from the centuries of looting and pillaging which has gone on, and which, unhappily, continues into the present time. In the United States, various conflicting State statutes of limitations create confusion about when, if ever, a museum or a private collector can expect to enjoy undisturbed possession of a work of art, or archeological artifact.

It raises questions of all kinds. If these active questions had been pursued, for example, when the great collections represented at the British Treasures exhibition in the National Gallery were being assembled, one wonders where title would have finally rested. This state of affairs allows foreign governments to sue to reclaim objects acquired in the distant past and purchased in good faith, even when their own laws would prohibit a similar suit.

Three years ago, the United States joined an international effort to curb the illegal trade in art and artifacts by passing Public Law

97-446, implementing the Unesco Convention on Cultural Property. We also need to complement that action by taking steps to foster the legal trade in cultural property. We must discourage theft, but we must also promote understanding and cultural exchange among different peoples.

Establishing a reasonable statute of limitations for suits by foreign governments would permit this legal trade and protect the good-faith purchaser. Senate bill 1523 enhances the commitment to curb theft by making objects that the owner knows were stolen ineligible for repose. Thus, the bill would not protect those who might purchase the objects that were recently stolen in Paris, and stolen from the National Museum of Anthropology in Mexico City.

[A copy of S. 1523 follows:]

99TH CONGRESS
1ST SESSION

S. 1523

To amend title 28 of the United States Code to set up a regime of repose for certain archeological and ethnological material and cultural property.

IN THE SENATE OF THE UNITED STATES

JULY 29 (legislative day, JULY 16), 1985

Mr. MATHIAS (for himself and Mr. BENTSEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend title 28 of the United States Code to set up a regime of repose for certain archeological and ethnological material and cultural property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Cultural Property Repose Act of 1985".

SEC. 2. (a) Title 28, United States Code, is amended by adding the following new chapter after chapter 99:

"CHAPTER 101—REPOSE FOR CERTAIN ITEMS OF ARCHEOLOGICAL AND ETHNOLOGICAL MATERIAL AND CULTURAL PROPERTY

"§1641. Repose for certain items of archeological and ethnological material and cultural property

"(a) Notwithstanding any other provision of Federal or State law, no foreign state shall, except as provided in subsection (b) of this section, bring an action in any court of the United States or of any State, including the District of Columbia, to recover possession of, or to obtain damages related to, any archeological or ethnological material or any article of cultural property which, before the institution of such action—

"(1) has been held in the United States for five years prior to the date of enactment of this chapter, and no such action shall be maintained if, on the date of enactment of this chapter, the archeological or ethnological material or cultural property, with respect to which such action was instituted, has been held in the United States for five years; or

"(2) has been held in the United States for two years irrespective of the date of enactment of this chapter by a recognized museum or religious or secular monument or similar institution, if, for that period, the institution has exhibited the item or has made knowledge of it available through publication, cataloguing, or otherwise; or

"(3) has been held in the United States for five years irrespective of the date of enactment of this chapter if, for three years of that period, that fact of such holding was public through public exhibition or publication, through consultation by the holder with scholars or experts, through published studies or otherwise; or

"(4) has been held in the United States for ten years irrespective of the date of enactment of this chapter unless the foreign state establishes that the United States holder acquired the item with actual knowledge that it had been removed from the possession of the country of origin in violation of the law of the country of origin, in which event the foreign state shall have two years from the date such state acquired knowledge of the identity of the holder in which to bring such action.

"(b) Notwithstanding any other provision of Federal or State law, no foreign state shall bring an action in any court of the United States or of any State, including the District of Columbia, to recover possession of, or to obtain damages related to, particular archeological or ethnological material or any article of cultural property, which was exported from the country of origin after designation pursuant to section 305 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2602), or after the President has applied import restrictions pursuant to section 304 of such Act, and which, before the institution of such action, qualified for exemption pursuant to section 312 of such Act.

"(c) For purposes of this section—

"(1) the term 'any archeological or ethnological material or any article of cultural property' means any article described in Article 1 (a) through (k) of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization on November 14, 1970, whether or not any such article has been designated as such by a foreign state for the purposes of such article; and

"(2) the term 'foreign state' means a foreign state (as defined in section 1603 of this title) and includes any assignee or successor in interest of a foreign state with respect to archeological or ethnological material or articles of cultural property.".

(b) The chapter analysis of part IV of title 28, United States Code, is amended by adding at the end thereof the following:

"101. Repose for Certain Items of Archeological and Ethnological Material and Cultural Property .... 1641".

SEC. 3. The amendments made by this Act shall apply with respect to any proceeding which is pending on or after the date of the enactment of this Act.

Senator **Mathias**. This morning we will take testimony from representatives of the Departments of State and Justice, and from the U.S. Information Agency.

We will also hear the viewpoints of museum administrators and archeologists. Because we do have a number of witnesses today, I am going to have to request that witnesses limit their oral statements to 5 minutes, but I will direct the reporter to include their written statements in their entirety in the hearing record as if they had been delivered.

Our first witness this morning is Mr. John C. Keeney, the Deputy Assistant Attorney General for the Criminal Division, accompanied by Mr. Ely Maurer, Assistant Legal Adviser to the Department of State, and Thomas E. Harvey, general counsel for the U.S. Information Agency.

Gentlemen.

STATEMENT OF A PANEL CONSISTING OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, DC; ELY MAURER, ASSISTANT LEGAL ADVISER, DEPARTMENT OF STATE, WASHINGTON, DC; AND THOMAS E. HARVEY, GENERAL COUNSEL AND CONGRESSIONAL LIAISON, U.S. INFORMATION AGENCY, WASHINGTON, DC

Mr. **Keeney**. Mr. Chairman, I can state, very briefly, the views of the Department of Justice with respect to S. 1523.

We are opposed—and for three basic reasons which are set forth in my statement. One, we believe it is discriminatory in that it is directed solely against foreign governments, and my colleagues will probably address that and are more competent to address it than I.

More importantly, as far as we are concerned, it invades an area of law presently vested within the domain of the States. In other words, it is a violation of our concept of federalism.

Further, we are not persuaded that the need for the legislation has been demonstrated. It is a far-reaching step to enact Federal legislation which would interfere with the domain of the States with respect to determining property rights. Finally, particularly as to (a)(1) in the statute, we think it gives a bonanza to a thief. As presently drafted, we think the legislation would enable someone who has stolen property abroad, to bring it into the United States, and, after 5 years, would be able to sell it to a museum or to another buyer in the United States.

Mr. Chairman, those are basically our views with respect to it. I would be glad to answer any questions later.

[Mr. Keeney's prepared statement follows:]

PREPARED STATEMENT OF JOHN C. KEENEY

SUMMARY

S. 1523 is extremely broad in its definition of cultural property. It would cover such property located in foreign national museums as well as such property yet undiscovered in foreign countries that is buried in the ground or under the sea, but declared to be government property.

S. 1523 is directed solely against foreign governments. It does not cover property of the U.S. Government. Nor does it cover property of state or municipal governments of the United States or municipal governments of foreign countries. Furthermore, it does not cover property of United States or foreign private entities.

S. 1523 invades an area of law presently vested within the domain of the states. In the absence of any compelling need, federal legislation in this area would violate basic principles of federalism.

The need for S. 1523 is unclear. The inadequacy of present civil remedies has not been established. Relief, if warranted, should come from state legislatures.

S. 1523 would, if enacted, basically alter the common law principle that a thief cannot provide good title to stolen property insofar as certain cultural property is concerned.

The Department of Justice is opposed to the enactment of S. 1523.

* * *

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity today to appear before this Subcommittee to present the views of the Department of Justice regarding S. 1523, "The Cultural Property Repose Act of 1985."

S. 1523 is intended "To amend Title 28 of the United States Code to set up a regime of repose for certain archeological and ethnological material and cultural property." The Department of Justice believes this legislation would be undesirable from the standpoint of domestic law and international relations.

In general, the bill would preclude a foreign government, as well as its political subdivisions, instrumentalities, assignees or successors in interest, from suing in any court of the United States to recover custody of -- or damages for -- its stolen cultural items which have been in the United States for certain periods of time in certain circumstances.

As we understand S. 1523, it is intended to make it extremely difficult for a foreign government to sue in federal and state courts to recover certain kinds of stolen property belonging to that foreign government. The list of objects covered is found in Article I of the UNESCO Convention and is set forth in Attachment A to this statement. The list includes property of historical importance; products of archeological excavations; antiquities more than one hundred years old; objects of ethnological interest; property of artistic interest; rare manuscripts; postage stamps; and articles of furniture more than one hundred years old -- to name but a few. The list is so broad that it may fairly be described to encompass all foreign governmental property that would likely be found in its museums, and, probably, any other property belonging to a foreign government that it is not presently using. Moreover, S. 1523 encompasses property which was in the actual custody of a foreign government (e.g., in a national museum) (sometimes referred to as "cultural property") and property that was only in its constructive possession (e.g., buried within an as yet undiscovered archeological site), but declared government property by law. S. 1523 also fails to address the differences in possible treatment for these two types of property.

S. 1523 would create a new chapter 101 (Repose for Certain

Items of Archeological and Ethnological and Cultural Property) in title 28, United States Code. Proposed new section 1641 of title 28, U.S.C. has two subsections.

Proposed subsection 1641(a)(1) would bar any civil suit to recover such property (or to obtain damages) by a foreign government if such property has been held in the United States for five years prior to the enactment of S. 1523. While "held" is not defined in S. 1523, the customary dictionary definition is "to maintain possession of." Hence, a thief who has stolen such property and has maintained possession of such stolen property within the United States for five years prior to the enactment of S. 1523 could not be sued by the foreign government to recover the property. The provision makes no distinction between innocent holders and holders who are in complicity and/or knowledgeable about the original theft. It consequently "grandfathers" and bars recovery of all such stolen property which has been within the United States for five years prior to the enactment of S. 1523. This appears to be a totally unacceptable provision as presently drafted.

Proposed subsection 1641(a)(2) states that a foreign government cannot file a civil suit for such property if it --

> has been held in the United States for two years irrespective of the date of enactment of this chapter by a recognized museum or religious or secular monument or similar institution, if, for that period, the institution has exhibited the item or has made knowledge of it available through publication, cataloguing, or otherwise.

While this provision is limited to museums and similar institutions, it does not require that such holder have purchased or acquired the property in good faith without notice of such property being stolen. Moreover, the provision unlike a related provision in 19 U.S.C. 2611(2)(A) does not describe what constitutes adequate exhibition of or publication about the article. On its surface, it appears that if a museum catalogued the object among its inventory at any time during the two year period it would bar recovery. Subsection (a)(2) appears in need of further clarification.

Subsection 1641(a)(3) appears to be intended primarily for the benefit of dealers and private collectors. It provides that there can be no recovery for such property that --

> has been held in the United States for five years irrespective of the date of enactment of this chapter if, for three years of that period, that fact of such holding was public through public exhibition or publication, through consultation by the holder with scholars or experts, through published studies or otherwise.

This subsection suffers from the same flaws as subsection (a)(2) because it does not clearly describe what "notification" has to be given. For instance, who qualifies as a scholar or an expert? Another art dealer? Another collector? Moreover, how widely must the published study be disseminated? Adequate and fair notice to owners in order to deprive them of their ownership rights is an essential aspect of due process. Subsection (a)(3), as written, does not appear to us to provide sufficient notification. For instance, if the property was of Mexican provenance, a fact which should obviously be known by the holder, the statute may want to require actual notification to the Mexican Government at some time during this five year time period.

Subsection 1641(a)(4) provides that this property cannot be recovered if it --

> has been held in the United States for ten years irrespective of the date of enactment of this chapter unless the foreign state establishes that the United States holder acquired the item with actual knowledge that it had been removed from the possession of the country of origin in violation of the law of the country of origin, in which event the foreign state shall have two years from the date such state acquired knowledge of the identity of the holder in which to bring such action.

It is unclear whether the provision is only requiring that the present holder lack guilty knowledge or that all the holders during the ten year period not have guilty knowledge. This aspect should be clarified and a definition of "United States holder" may be beneficial. The provision, by placing the burden on the plaintiff foreign government to prove guilty knowledge on the part of the "holder," significantly alters the common law requirements in this area. It would appear that if the Congress intends to pursue S. 1523, the meaning of the term "possession" (i.e., does it include constructive as well as actual possession?) in subsection (a)(4) should also be clarified.

Proposed subsection 1641(b) appears to us to be intended to ensure that the holder of property which might eventually be covered by 19 U.S.C. 2602 (Agreements to Implement Article 9 of the UNESCO Convention) or 19 U.S.C. 2603 (Emergency Implementation of Import Restrictions) be immune from civil recovery suits to the same extent that such property is exempted from seizure and forfeiture under 19 U.S.C. 2611. However, since the President has not as yet entered into any agreements under 19 U.S.C. 2602 or issued any emergency regulations pursuant to 19 U.S.C. 2603, there is no property presently encompassed within the scope of proposed subsection 1641(b).

The introductory remarks of the sponsors of S. 1523 (which appeared in the Congressional Record at pages S10288 - S10289 on July 29, 1985), seem to indicate that this legislation is designed to modify particular provisions of the law of states, such as Texas, which permit civil law suits to recover stolen property from a possessor who may have had no knowledge of the theft, even after such person has been in possession of the property for many years. While not judging the merits of Texas law, it is our strong belief that the issue at hand is one which properly belongs to state authorities. If one is dissatisfied with the law of Texas, New York, or for that matter Maryland, the appropriate forum in which to seek correction is in Austin, Albany, and Annapolis, respectively. And, while we do not necessarily agree with the merits, we note that the New York

State Legislature is presently considering a state bill S. 3273 that addresses aspects of the issue prompting S. 1523.

In the absence of a national problem, we strongly oppose federal interference in matters that are historically and properly within the domain of the states. Moreover, for federal legislation, in the absence of any compelling need, to alter the common law principle regarding stolen property of "Nemo Dat Quod Non Habet" (One cannot give what he does not have), even when limited only to certain property of foreign governments, seems to this Department to be out of character for the American nation. Such legislation may not only offend foreign countries, but may also encourage them to enact comparable laws that would make it impossible for the United States Government to recover its stolen property overseas.

S. 1523 is bad law. It is too broad. It violates basic principles of federalism. It offends international justice. It benefits few, and it invites retaliation. The Department of Justice cannot support any legislation that makes the United States a "pirate's cove."

I thank you for permitting the Department to express its views on S. 1523.

Senator MATHIAS. Thank you.

Mr. Maurer.

STATEMENT OF ELY MAURER

Mr. MAURER. Mr. Chairman, my name is Ely Maurer. I am an Assistant Legal Adviser for Educational, Cultural and Public Affairs in the Department of State. I represented the Department in the legislative process leading to the enactment of the Convention on Cultural Property Implementation Act, the CPIA, and have been involved for many years in the recovery of foreign cultural objects.

I am pleased to have the opportunity today to appear before this committee to present the views of the Department of State.

The Department considers S. 1523 to be undesirable from the standpoint of international relations and domestic law, and does not favor its enactment.

Stolen cultural items should be protected at least as much as other stolen property, such as autos, jewelry, et cetera.

Under our law a rightful owner may recover, not only from the thief but from an innocent purchaser, by bringing suit after receiving notice of the identity of the present possessor.

Any action to change the law to make such recovery more difficult bears the burden of justifying such a change. Arguably, even more protection, and not less, as the bill provides, should be given, when we are dealing with stolen foreign cultural items, since such items often constitute part of the patrimony and national heritage of the claimant countries.

Thus, under one provision of the bill, the Mona Lisa, stolen from the Louvre and hidden in this country for 5 years, could not be recovered by the Louvre Museum, unlike the remedy available to a French citizen for a stolen stereo set.

In short, cultural objects should get as good treatment as ordinary objects, and, arguably, better treatment. More generally, the bill is undesirable for several reasons.

One, it represents, as Mr. Keeney has said, a Federal incursion into State law, and an overriding of such State law, in situations where no international agreement or demonstrated Federal need, requires a controlling Federal rule.

Two, it discriminates against foreign governments, and could affect their cooperation with us and open us to similar discriminatory treatment by them.

Mr. Keeney has referred to this, and it is a glaring fact that the legislation is targeted solely at foreign governments and may cause us to be subject to retaliation, and may cause us, in fact, to fail to get the cooperation which, in other matters, these foreign governments have been willing to give us.

Three, the bill creates new statutes of limitation which change the law in harmful ways by reducing the protection of the rightful owner.

Four, it takes away common-law remedies which neither the Convention on Cultural Property Implementation Act, the CPIA, nor the Unesco Convention which it implements, intended to be affected.

Although the bill appears to be modeled after section 312 of the CPIA, it differs markedly from section 312 in the following respects.

First, the statutes of limitation in section 312 relate only to the U.S. Government measures of seizure and forfeiture and not to civil actions; second, section 312 is completely prospective in application and does not apply to cultural items already in the United States, as does the bill; and third, section 312 has more stringent provisions in terms of longer time periods, the requirement of the innocence of the purchaser, the giving of adequate notice of the identity of the present possessor, and the giving of adequate opportunity to bring suit.

In conclusion, for the foregoing reasons, the Department does not favor the enactment of S. 1523.

[Mr. Maurer's prepared statement follows:]

PREPARED STATEMENT OF ELY MAURER

SUMMARY

The Department of State views S.1523 as undesirable from the standpoint of international relations and domestic law and does not favor its enactment.

In general, the bill overrides state law and precludes a foreign government from recovering stolen cultural items in the United States, in situations where the foreign government would not be debarred heretofore under such state laws.

Stolen cultural items should be protected at least as much as other stolen property, such as autos, jewelry, etc. Under our law a rightful owner may recover not only from the thief but from an innocent purchaser, by bringing suit after receiving notice of the identity of the present possessor. Any action to change the law to make such recovery more difficult bears the burden of justifying such a change. Arguably, even more protection and not less (as the bill does) should be given when we are dealing with stolen foreign cultural items, since such items often constitute part of the patrimony and national heritage of the claimant countries. Thus under the bill the Mona Lisa, stolen from the Louvre and hidden in this country for five years, could not be recovered by the Louvre Museum, unlike the remedy available to a French citizen for a stolen stereo set.

The bill is undesirable since: (a) it represents a Federal incursion into state law and an overriding of such state law in situations where no international agreement or federal policy need requires a controlling federal rule; (b) it discriminates against foreign governments without reasonable justification and could open us to similar discriminatory treatment by foreign governments; (c) it has new statutes of limitations which change the law in harmful ways by reducing the protection of the rightful owner; (d) it takes away common law remedies which neither the Convention on Cultural Property Implementation Act (CPIA) nor the UNESCO Convention intended to be affected.

Although the bill appears to be modeled after Section 312 of the CPIA, it differs markedly from Section 312 in that: (a) the statutes of limitations in Section 312 relate only to U.S. Government measures of seizure and forfeiture and not to civil actions; (b) Section 312 is completely prospective in application and does not apply to cultural items already in the United States, as does the bill; (c) Section 312 has more stringent provisions based in general on the innocence of the purchaser and adequate notice of the identity of the present possessor and adequate opportunity to bring suit.

* * *

Mr. Chairman and Members of the Committee:

My name is Ely Maurer. I am an Assistant Legal Adviser in the Department of State, dealing with educational and cultural matters. I represented the Department of State in the enactment of the Convention on Cultural Property Implementation Act and have been involved for many years in the recovery of foreign cultural objects.

I am pleased to have the opportunity today to appear before this Subcommittee to present the views of the Department of State regarding S.1523 "The Cultural Property Repose Act of 1985."

This is a Bill "To amend Title 28 of the United States Code to set up a regime of respose for certain archeological and ethnological material and cultural property." The Department of State views this bill as undesirable from the standpoint of international relations and domestic law and does not favor its enactment.

In general, this bill would preclude a foreign government or its instrumentalities (or assignees or successors in interest) from suing in any court of the United States to recover possession of or damages for stolen cultural items which have been in the United States for certain periods of time in certain circumstances--and would preempt and override existing state statutes of limitations relating to stolen property.

Before we get down to the details of the bill, it may be well to view the bill in its proper perspective. Basically, we are dealing here with stolen property, not with a view to criminal sanctions of fine or imprisonment, but with a view to civil actions to recover the stolen property. Nothing is more normal under our system of law than for the owner of stolen property, whether it be an auto, a piece of jewelry or a television set, to be able to use our legal process to recover his property. It is also a fundamental tenet of our law that the rightful owner may recover his property not only from the thief, but even from an innocent purchaser who purchased for value by bringing suit after receiving notice of the identity of the present possessor. Any action to change the law to make such recovery more difficult bears the burden of establishing the justification for such a change. This is even more so when we are dealing with stolen cultural items. They are certainly entitled to as much protection as an auto or a piece of jewelry, which is all our existing system of law provides. Indeed, an argument can be made that if anything they should receive more protection, since the items here involved often constitute part of the patrimony or national heritage of the claimant countries. Certainly, a national treasure stolen from a foreign country's national museum should not receive less protection than a stereo set stolen from a national of that country. And yet that is precisely what the proposed legislation would do. Thus, if the Mona Lisa had been stolen from the Louvre and hidden in this country for five years before the bill was enacted, the French Museum would have no remedy, unlike the remedy available to a French citizen for his stolen stereo.

We should be as solicitous to assure the recovery of cultural items as we are for ordinary property. That is what our existing law does, and we have no reason to believe that this imposes higher risks or burdens on U.S. dealers in such property than are imposed by the application of those same laws to persons who deal in autos or other types of ordinary property. We recognize of course that sometimes, unfortunately, even after great care is exercised in purchasing a cultural item, it may turn out to be stolen, but the exercise of such care should not be the basis for debarring the rightful owner any more than he would be debarred from recovering his stolen auto, jewelry, etc. Indeed we must not, by affording less protection now to stolen cultural items, undercut the actions of those individuals or institutions who have been meticulous in examining the background of cultural items to be purchased.

Now, turning to the bill before us, we note that the bill appears to have been modeled after (but with marked deviations from) Section 312 of the Convention on Cultural Property Implementation Act (CPIA), P.L. 97-446; this Section exempted cultural items in certain circumstances from seizure and forfeiture by U.S. authorities under customs law. Several points should be made to clarify the picture. First, the CPIA--which implements the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Onwership of Cultural Property--provided, as an important element of its scheme of protection, for the imposition of import restrictions on stolen or wrongfully removed cultural items, to be followed, when such restrictions are violated, by seizures and forfeitures by U.S. authorities under the customs law. Secondly, the CPIA does not provide for civil actions by foreign governments, institutions or individuals; nor was the CPIA or the UNESCO Convention intended to affect these or other remedies, but merely to provide an additional remedy. Thirdly, the exemptions of Section 312 relate solely to the seizure and forfeiture measures by the U.S. authorities and the exemptions are in general based on the innocence of the present holder and the existence of periods and circumstances adequate to provide reasonable notice to the rightful owner of the location of cultural items and reasonable opportunity to pursue available remedies.

With this as background, we would like to comment on the proposed subsections (a) and (b) of Section 1641.

A

The effect of subsection (a) is to cut off the possibility of suit in Federal or State courts by foreign governments and their instrumentalities by establishing certain new statutes of limitations. This is undesirable for several reasons.

First, subsection (a) is a questionable Federal incursion into matters which have typically been handled by state law. Thus it would override as to one type of owner (foreign governments) all state statutes establishing the requirements relating to common law suits for recovery of stolen cultural items. It would substitute a Federal judgment as to what is a desirable time frame for a common law action in place of a state judgment, in a situation where no international agreement or demonstrated policy need requires a controlling Federal rule.

Secondly, the provisions of subsection (a) would appear to be discriminatory against foreign governments and their instrumentalities without reasonable justification having been shown. Clearly, foreign private museums and religious institutions, corporations and individuals will be able to bring suits as before. Likewise governmental or private museums, religious institutions, corporations or individuals in the United States will also be able to bring suits as before. The Department would be at a loss to explain this discriminatory treatment to foreign governments, particularly those from which we seek law enforcement cooperation in other fields--and such treatment could open us up to similar discriminatory treatment by foreign governments in this very field of cultural property.

Thirdly, the provisions of subsection (a) are questionable since they would change state law in a harmful way, as set forth below.

Under the common law system prevalent in the United States, a thief cannot give good title, and thus it is generally possible for the owner to obtain recovery of stolen property from even remote successors in interest, despite acquisition of such property by the possessor in good faith and for value. This rule of law is illustrated by the well-known case of Menzel v. List, 49 Misc. 2d 300, 267 N.Y.S. 804 (Sup. Ct., 1966) aff'd per curiam, 28 A.D. 2d 516, 279 N.Y.S. 2d 608 (App. div. 1967). In this case plaintiff, a Jewish refugee from Belgium, was able to recover from a New York dealer a Chagall painting which had been seized by the Nazis from his apartment in Belgium during the war. The court held that the statute of limitations did not start to run until the plaintiff had notice of the location of the painting in New York and had made a demand for the painting upon the then possessor. If subsection (a) were adopted, it would override the law of New York and other jurisdictions with respect to suits brought by foreign governments or their instrumentalities to recover stolen cultural items. Thus, if subsection (a) had been in effect, it would have made it impossible for a suit to be brought by the Weimar Museum, an agency of the German Democratic Republic, to recover the famous Duerer paintings which were stolen in 1945, were purchased by a U.S. citizen in Brooklyn in 1946, and only came to public light in 1969. See Kunstsammlungen zu Weimar v. Elicofon, 678 F.2d 1150, (2d Cir. 1982).

In this connection it should be further recalled that during the war a great many cultural items were taken illegally by members of our armed forces and the armed forces of other countries, and that many of these items have come to the United States.

Turning now to subdivision (1) of subsection (a), it would be possible, as we have said before, for a person to have stolen a painting during the war from a government museum in Europe, to have brought it to the United States, and to have become immune from any civil action in domestic courts for the recovery of the painting by its rightful owner merely by having concealed it from public view for five years. This result is particularly undesirable from a foreign relations standpoint.

With respect to subdivision (2) dealing with the holding for two years by a museum or similar institution, we believe these provisions do not provide adequate safeguards. We note that the comparable provisions in Section 312(2)(A) of the CPIA require the institution to show a holding of three consecutive years and purchase for value, in good faith and without notice of illegal importation, and to meet more stringent requirements on publication and cataloguing.

With respect to subdivision (3) dealing with the holding by any person for five years, we believe likewise that these provisions do not provide adequate safeguards. We note that the comparable provisions in Section 312(2)(B) and (C) of the CPIA require a holding for 10 consecutive years with exhibition for five years in a recognized museum or similar institution or the giving of fair notice of its location through adequate and accessible publication, or by other means prescribed by regulation.

With respect to the provisions of subdivision (4) dealing with the holding in the United States for 10 years, we believe here, too, that the provisions do not provide adequate safeguards. We note that the comparable provisions in Section 312(D) of the CPIA require a holding for 20 years and purchase for value, as well as lack of knowledge of a violation of law.

Finally, it should be noted that the time periods in CPIA Section 312 do not apply to cultural items already in the U.S. at the time of its effective date, whereas, subsection (a) of

S.1523 applies to items already in the country so that in some cases the time periods may already have been satisfied.

B

With respect to subsection (b), the purpose of these provisions appearsto be to preclude a foreign government which is a Party to the Convention--in situations where cultural items fall under the CPIA and seizure and forfeiture by U.S. Government authorities are exluded under the CPIA--from pursuing any common law remedies. The objection to these provisions is that it was intended that the CPIA would give an additional remedy to government Parties, and not that long standing common law remedies would be removed, especially in a most detrimental way in situations where no remedy exists under the CPIA. Further, these provisions also constitute an undesirable incursion into state law and discriminatory treatment against foreign governments, in the same way as previously described for subsection (a).

On a technical level subdivision (b) appears to have two flaws. (1) It fails to refer to the import restrictions imposed by operation of law under Section 308 of the CPIA, as it refers to the import restrictions under Sections 304 and 305. (2) It fails to authorize foreign government suits, as envisaged by subdivision (a) when it precludes suits "except as provided in subdivision (b) of this section."

On the substance of the bill, as said before, the Department considers the bill undesirable from a foreign relations and domestic law standpoint and does not favor its enactment.

I thank you for the opportunity to appear before you and will be pleased to attempt to answer any questions you may have.

Senator MATHIAS. Thank you. Mr. Harvey.

STATEMENT OF THOMAS E. HARVEY

Mr. HARVEY. Mr. Chairman, my name is Tom Harvey. I am general counsel and congressional liaison of the U.S. Information Agency, and I am accompanied this morning by R. Wallace Stuart, assistant general counsel of the Agency; Toni Winston from my office; Anne Guthrie, the executive director of the President's Advisory Commission on Cultural Property; and by Maria Papageorge, the deputy director of that committee.

It is a pleasure to appear before the subcommittee this morning to express the position of the U.S. Information Agency concerning S. 1523, the Cultural Property Repose Act of 1985.

The U.S. Information Agency concurs with the statement of the Department of State on the proposed legislation.

We also believe that this bill would have an adverse effect on international cultural relations which are a primary concern of our Agency.

In effect, this legislation would provide a protective safe haven for cultural property gathered illicitly from abroad and held in the United States.

We believe its passage would encourage traffic in illicitly obtained archeological objects and other cultural property.

The Agency views this proposed legislation as contrary to the purposes of the Convention on Cultural Property Implementation Act. Passage of S. 1523 may well also cause stress in our international cultural relations since it closes off recourse to courts for States trying to reclaim their patrimony.

The Cultural Property Act represents a commitment of the United States to the international community. To overlay another set of repose conditions affecting civil actions by sovereign states would cause a serious setback in the progress of cultural relations between the United States and other governments, especially since it was not intended that common-law remedies would be affected by the Cultural Property Act.

Thank you for allowing the Agency to address the problems which we believe will result should S. 1523 be enacted, Mr. Chairman. I shall be pleased to answer any questions you may have. Thank you.

[Mr. Harvey's prepared statement follows:]

PREPARED STATEMENT OF THOMAS E. HARVEY

Mr. Chairman and members of the Committee:

My name is Thomas E. Harvey, I am the General Counsel and Congressional Liaison of the United States Information Agency. It is a pleasure to appear before the subcommittee to express the position of the United States Information Agency concerning S.1523 "The Cultural Property Repose Act of 1985."

The United States Information Agency concurs with the statement of the Department of State on the proposed legislation. We also believe that this bill could have an adverse effect on international cultural relations, which are a primary concern of our Agency. We oppose S.1523.

The title of the bill is "to amend title 28 of the United States Code to set up a regime of repose for certain archaeological and ethnological material and cultural property." In effect, however, it is legislation to provide a protective safehaven for cultural property gathered illicitly from abroad and held in the United States. We believe its passage would encourage traffic in illicitly obtained archaeological objects and other cultural property.

The thrust of the legislation is to preclude, after certain holding periods, a foreign state from bringing a civil action to recover its cultural patrimony in United States Federal courts or State courts.

The Agency views this proposed legislation as contrary to the purposes of the Convention on Cultural Property Implementation Act (Cultural Property Act), P.L. 97-446, which was finally passed more than 10 years after the signing of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The bill clearly does not complement the Cultural Property Act.

This legislation would hardly befit one of the major art importing nations in the World, which has ratified the 1970 UNESCO Cultural Property Convention.

Passage of S.1523 may well cause stress on our international cultural relations since it closes off recourse for states trying to reclaim their patrimony. A state party requesting assistance may somehow fall technically short in meeting legal requirements of the Cultural Property Act, such that its protections are not then available to stem the flow of its cultural property. S.1523 would prejudice recourse to civil actions by which the rightful owner might reclaim its national treasure from a U.S. holder. For some two years now, the Agency has been actively notifying foreign countries of passage of the Cultural Property Act and of its effect in placing the U.S. in the role of partner in protecting cultural property rather than as an unrestrained consumer. S.1523 would weaken this role.

There are specific instances where the repose conditions, relating to precluding civil actions, in S.1523 differ significantly from those affecting forfeiture and seizure in the Cultural Property Act...

A) Section 1641(a)(2) of the Bill provides that artifacts held in the U.S. by a museum for 2 years during which time it is exhibited or catalogued, cannot be the subject of litigation by a foreign government.

Section 312(2)(A) of the Cultural Property Act provides that artifacts are immune from seizure and forfeiture when held in the U.S. for 3 consecutive years by a museum, and such material was purchased by the institution for value in good faith, and without notice that material was imported in violation of the Act, and during which time such material was:

-- reported as an acquisition in a newspaper or periodical with a circulation of 50,000;

-- exhibited to the public for 1 year; or

-- catalogued and made available to the public for 2 years.

B) Section 1641(a)(3) of S.1523 provides that artifacts held in the U.S. for only 5 years are not subject to litigation if they have been exhibited, published or otherwise made known to scholars during only 3 of the 5 years. The exhibition of these objects need not occur in a museum or similar institution.

Section 312(2)(B) of the Act, however, provides that artifacts held in the U.S. for 10 consecutive years are not subject to seizure if they have been exhibited to the public in a museum or similar institution for 5 of the 10 years. Note also Section 312 (2)(C).

C) Section 1641(a)(4) of S.1523 provides that artifacts held in the U.S. for 10 years are immune from civil actions unless the foreign state can demonstrate that the U.S. holder had actual knowledge of illegal removal from the state.

Section 312(2)(C) of the Act provides that artifacts held in the U.S. for 10 years under circumstances in which the country of origin received or should have received fair notice of its location are immune from seizure. See also Section 312 (2)(D).

D) Finally, S.1523 could conceivably retroactively protect stolen masterpieces from lawsuits by foreign governments seeking their recovery. Section 308 of the Act clearly prospectively prohibits the importation of articles of stolen cultural property that appertain to the inventory of a museum or similar institution.

The Cultural Property Act represents a commitment of the U.S. to the international community that was made with the drafting and adoption of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The U.S. played a major role in drafting the Convention and the Senate gave its unanimous advice and consent to ratification in 1972. When the Congress thoroughly debated and carefully drafted the 1983 implementing legislation, the time limits and notice requirements of Section 312 were seriously debated. The Cultural Property Act represents a compromise on "repose" conditions relating to seizure and forfeitures on the part of all interests. To overlay another set of repose conditions affecting civil actions by sovereign states as prescribed in S.1523 would cause a serious setback in the progress of cultural relations between the U.S. and other governments, especially since it was not intended that the common law remedies would be affected by the Cultural Property Act.

Thank you for allowing the Agency to address the problems which we believe will result should S.1523 be enacted. I shall be pleased to answer any questions you may have for me.

Senator MATHIAS. Thank you, Mr. Harvey.

Mr. Keeney, let us start with your testimony in which you note that the bill would alter the common-law rule that one cannot give what he does not have; but as a matter of fact, does not the common law provide for precisely that in some circumstances?

Mr. KEENEY. In the area of negotiable instruments it does, Mr. Chairman, but I am not aware that it does elsewhere.

Senator MATHIAS. Yet, adverse possession is a very familiar common-law principle.

Mr. KEENEY. Yes, sir; adverse possession is a real property concept. It has, in some States, been applied to chattels. But we have to keep in mind, Mr. Chairman, that in utilizing the concept of adverse possession, in enacting a repose statute or statute of limitations period, that we have to take into consideration the various aspects that are involved in title being acquired by adverse possession, and those are notoriety with respect to open and notorious, hostile possession of the property, which, in the normal event, at least in the eyes of the law, would give due process notice, or notice and an opportunity to exercise due process rights to the owner.

I think that in this area, insofar as the Federal Government enacting a period of repose which is bottomed on some sort of an adverse possession, that we would have to be very careful: One, to make certain that we have an extended time period, and two, that the due process rights of persons who might have a claim on the property are protected.

Senator MATHIAS. I detect that you are uncomfortable with the 5-year period.

Mr. KEENEY. I am uncomfortable with the 5-year period; yes, sir; very definitely.

Senator **Mathias**. Would you have a suggestion as to what would be a reasonable period?

Mr. **Keeney**. Mr. Chairman, I anticipated you were going to ask that question, and I really do not, except to say that I think if a period were to be enacted, and, you know, other aspects of the bill were to be acceptable, that the period would have to be an extended one in order to protect the rights of parties.

Otherwise, you might be benefiting somebody who might be involved in a theft, keep the property, bring it into the United States, and keep it for a period of time during which, if we are dealing with art objects, it presumably would appreciate, and we would be giving, in that particular example, a benefit to a thief which public policy would be strongly against.

Senator **Mathias**. Of course, here again, you are talking about notorious, and continuous possession. Someone could not bring it to this country and hide it.

Mr. **Keeney**. Well, that is one of the points I am making, sir, that if it were to be fair, it would not only have to have the extended period of time, but it would have to have the open, notorious, adverse possession aspect also.

Senator **Mathias**. I, certainly, agree with that. There has to be some open display of ownership. Of course, in addition to the adverse possession principle, there is the concept of the statute of limitations, which is a familiar principle.

Every State has a statute of limitations for conversion. What we would do with this bill is establish the same statute of limitations for every State.

Now, we can negotiate how long the time ought to be, but is there some desirability in having a uniform period of time, at least among the 50 States?

Mr. **Keeney**. Mr. Chairman, as I indicated earlier, I have not seen the evidence that there is a need for the Federal Government to intervene in this area and establish a statute of limitations or a period of repose that would be uniform among the 50 States. I have not really seen the need.

And as a general proposition, under the principles of federalism, the Department of Justice opposes legislation which would interfere with the domain of the States, where a clear need has not been demonstrated.

Senator **Mathias**. Let me turn, at this point, to Mr. Maurer on that very subject: whether there is a need for some uniformity.

Let us say someone, a foreign national, comes to the United States, or, perhaps a foreign government comes to the United States. It says that there is stolen cultural property somewhere in the United States, and seeks help and advice in recovering it.

What we would say today is that you go to the State, and you will be subject to the provisions of State law, even if you bring your action in Federal court. Do we agree on that?

Mr. **Maurer**. Yes; I think that we do agree that he has to go to the State, but first he has to find the fellow who has the stolen property, and we have been confronted by that great problem in the recent Mexican episode, where priceless objects were stolen and the Mexican Government wrote a note to us, asking for our help.

We asked the Mexican Government for a list of the stolen objects. Quickly, the FBI and the customs people were informed, and they are on the border trying to check this stuff as it comes in, but nobody has yet ascertained whether it has come into the United States or where it is. And, basically, I think one of the most difficult problems, in all this business, is finding the person that has the stolen objects.

Senator **MATHIAS**. Let us assume we know that; we know who the person is. We also know that some of the things are in Minnesota, some are in Arizona, some are in New York, and some are in California.

We have to tell the parties who are seeking to recover the objects, that they are going to have to apply a different rule in each place. Is that not true?

Mr. **MAURER**. Yes; but I think there is more uniformity in the statutes of limitations, perhaps, than that might indicate. For instance, the rule of New York, as you know, in the case of *Menzel* v. *List*, was enunciated to be that if you know the possessor, then you must serve notice on him, and then you have a statute of limitations which is for 2 or 3 years.

In other States, it may be that you do not have to serve notice, but the statute starts running from the time when knowledge of the possessor does exist.

Once you have knowledge, then I do not believe the statutes of limitation are too long. In the case of New York, I think in *Menzel* v. *List*, it was 2 years or 3 years after giving notice.

Senator **MATHIAS**. So, if some of the things were in New York, you might be able to get those back under some circumstances, but in another State you might not be able to recover them?

Mr. **MAURER**. Well——

Senator **MATHIAS**. Assuming the statute had run in one State and not in the other?

Mr. **MAURER**. Yes; I think that that is so, but after notice, I think most of them would require a period of 3 years or so; but I would defer to Justice, which may be more familiar with local statutes of limitations on stolen property than I am.

Senator **MATHIAS**. But, hypothetically, it could be that recovery would be permitted in one State and not in another?

Mr. **KEENEY**. That is true, Mr. Chairman; yes, sir.

Senator **MATHIAS**. Mr. Harvey, your job at USIA is to explain all this to the world. Is this hard or easy to explain?

Mr. **HARVEY**. It is not an easy thing to explain, Mr. Chairman. Quite frankly, the Cultural Property Act is, for me, a lawyer, not an easy thing to comprehend, even in its own right, let alone to pass on to someone else.

It does become difficult for us, because of our Agency's responsibility for cultural interaction with other States. When they come to us, they seek assistance. They may seek assistance for securing this cultural patrimony of theirs. We would like to do everything we can to assure that that is returned to them, or that it is made as difficult as possible to import that into the United States, improperly.

We believe that the legislation, as enacted, is adequate to give us the handle to do that.

Senator MATHIAS. You mean the legislation that is on the books?

Mr. HARVEY. The Cultural Property Act currently on the books; yes, sir, Mr. Chairman.

Senator MATHIAS. With the law in its present state, what can we tell the Mexican Government? We can do as Mr. Maurer suggested: alert the border authorities so that if any of this stolen property should be attempted to be brought through, it can be picked up at the border. That, however, is unlikely to occur. Anybody who is sophisticated enough to make the discriminating choices that were made in Mexico City is going to be smart enough to find a way to smuggle the objects into this country without being caught at the border.

What else, with the present state of the law, can the U.S. Government do to help the Mexican Government recover these art objects?

Mr. HARVEY. Well, there is not a great deal you can do to help them recover them until you find them, and I think that that was part of Mr. Maurer's point, that he was making to you. Until you actually figure out where these little rascals are, that there is not a lot to be done about it.

Mr. MAURER. I might add, Senator, that the border is the place of the first line of defense, if you will, but it is true, the way the CPIA is worded, that since this property was stolen from a museum, under section 308, I believe, of the CPIA, immediately, there is an import restriction on it, and if it be found in the hinterland of the United States by the FBI or the customs people, it can still be seized and forfeited.

So, the remedy isn't necessarily only at the border. But the main thing is, how do you find it?

Senator MATHIAS. Well, of course, on the legal basis upon which we are meeting here today, we are assuming that it will surface someplace. In all of these cases, as far as this law is concerned, we are assuming that there is some knowledge as to where a stolen object is.

One of the purposes of any legislation, it seems to me, would be to provide a greater deterrence for these acts by clarifying the law, by making the law more specific, and providing, therefore, some incentive to recover.

Whether or not this bill would accomplish that is what we are here to discuss. Mr. Keeney, in your testimony, you note that common-law tenets prevent a thief from giving good title to a stolen object and allow the rightful owner to seek the return of the object, even from innocent purchasers.

Mr. KEENEY. Yes, sir.

Senator MATHIAS. But—and this goes to the question of deterrence that I was just raising—is not one of the purposes of a statute of limitations to encourage the owner to come forward in a timely way and assert his claim?

Mr. KEENEY. Yes, sir; but, Mr. Chairman, you have to let the owner know that his property is in existence and it is in the possession of somebody, some particular person, before, normally, any statute of limitations begins to run, as Mr. Maurer explained earlier.

Senator MATHIAS. Right.

Mr. **Keeney**. Now, there is an element of due process with respect to the property.

Senator **Mathias**. We are assuming, now, that there is some knowledge, that the rightful owner knows where it is.

Mr. **Keeney**. Yes.

Senator **Mathias**. As soon as the rightful owner knows where it is, he has to act?

Mr. **Keeney**. Normally, when you know where it is, the period of repose, or the statute of limitations would begin to run, and the owner of the property would have an obligation to protect his own property interests.

Senator **Mathias**. And if he fails to do that, then the holder—an innocent purchaser—would then acquire good title and be able to pass good title?

Mr. **Keeney**. Yes; if those conditions are met; yes.

Senator **Mathias**. Yes.

Mr. **Keeney**. We are dealing, though, as you pointed out very well, Mr. Chairman, on a State-by-State basis, and, you know, the various States have different provisions with respect to statute of limitations and the notice requirements with respect thereto, insofar as chattels are concerned.

Senator **Mathias**. Let me turn to Mr. Maurer. Your testimony reflects a concern about stolen cultural property. What about the case of objects that, in the common perception, are not stolen? For example, what about objects brought to this country with apparent legitimacy many years ago, but that now fall within the sweep of a broad, retroactive cultural patrimony law promulgated by another government?

I suppose that the classic case of this sort would be the Elgin Marbles, purchased by Lord Elgin from the then sovereign government, brought with the consent of that government to London, and now claimed by the current Greek Government.

It is possible, if you apply the strict provisions of a retroactive promulgation of that sort, that items that have been familiar to museum visitors for years, would be repatriated to the country of origin.

How do we address this part of the concern?

Mr. **Maurer**. Well, there is a question of things of really ancient vintage. I guess we are talking about situations that go back to antiquity, where the Romans looted all the Greek art when they became masters of Greece, and it is also true that we have the problem of the Elgin Marbles, and I must say that——

Senator **Mathias**. A more current example is Peru, for example, where there is a very broad repatriation law in effect at the moment, which would draw back almost all Peruvian art objects, wherever they are in the world.

Mr. **Maurer**. Well, I do not think most countries would give recognition to the retroactive effect of a law on an object which has left Peruvian territory; in other words, our normal concept is that expropriation statutes only have application to, are territorially restricted to, the country where the object is.

In other words, I do not think most countries would recognize that Peru could claim something which already was in England when the statute came out.

But going back to the case of the Elgin Marbles, if somebody now were to take the equivalent of the Elgin Marbles, and display them as the British do in the National Museum of Great Britain—I note that they have become world famous there and the whole room is occupied with them—I would have thought that such a display was noticed and would start any statutes of limitations that apply, in the British system, to stolen property.

And I think, in this day, if Peru has enacted a statute which expropriates property that is on its territory, and has become the title owner of it, and somebody buys it and holds it in a way that gives notice to Peru, I think Peru would be limited by the local statute of limitation, and would have to bring an action of recovery in the time period of the particular law.

I hope that is responsive. I am sort of wandering on.

Senator **Mathias**. It is a difficult area.

Mr. **Maurer**. Yes.

Senator **Mathias**. Mr. Keeney, each State has its own statute of limitations. Some of them are similar; some of them are different.

What happens if an art object travels from State to State?

Mr. **Keeney**. Insofar as the statute of limitations is concerned, sir?

Senator **Mathias**. Yes.

Mr. **Keeney**. I think that the locus of the chattel determines the statute of limitation, and that can have some unusual effects.

For instance, you could have it in Pennsylvania with a 3-year statute, and then you could move it to Ohio with a 6-year statute, and I think that while it is in Ohio, the 6-year statute would apply. It probably could have some——

Senator **Mathias**. But a sophisticated art thief would not go from Pennsylvania to Ohio. He would go from Ohio to Pennsylvania.

Mr. **Keeney**. They would go in reverse; exactly. Yes. We have that disparity, Mr. Chairman.

Senator **Mathias**. That raises the question of when it is useful to have a Federal statute of limitation. Should we enact a Federal statute of limitation now, or, should we wait until the Mexicans find that they are barred by the Pennsylvania statute, and then say to them: it is too bad, we will do something so it will not happen again in the future?

Mr. **Keeney**. Mr. Chairman, it is nice to talk prospectively and anticipate problems arising in the future, but our position is that on Federal legislation, it is something, particularly when we are dealing with title, or we are dealing with criminal law, that we should act only when there is a demonstrated need for action, and, frankly, we have not seen any need.

I am not disputing that there are problems that arise, but there are problems in every area of life, and we do not always address those problems with national legislation.

Senator **Mathias**. We will test with some of the other witnesses before us this morning whether there is any need for Federal legislation.

Mr. **Keeney**. I was going to suggest that, that some of the other witnesses are much more knowledgeable than I with respect to the problem, Mr. Chairman.

Senator **Mathias**. But I think it is useful that you raise that question.

What about the grandfathering provisions of this bill? They seem to be objectionable to some.

Mr. **Keeney**. Grandfather provisions, you know, the one in (a)(1) I think is clearly objectionable because it could be applied in a situation where the thief himself benefits from having possession within the United States for the 5-year period prior to the enactment of the statute.

Now, I understand that it is not the intention, and presumably you would correct it, but as it is drafted now, it could give the thief the ability to pass title after 5 years.

Senator **Mathias**. Well, obviously, no one wants to do that. What about closing the door, however? What about a provision to grant repose within a period of time after enactment: 1 year, 2 years, whatever might be desirable?

Mr. **Keeney**. Well, you know, there obviously is some merit, in a period of repose, but I am not prepared to say what the period of repose should be.

I think it should be an extended period of time, and, as I indicated earlier, in addition to the passage of time, I think there should be some elements that would satisfy the due process needs of the original owner.

Senator **Mathias**. Of course, in some cases there is almost no period of time that will satisfy the original owner. In the case of the Elgin Marbles, it has been 150 years, and it is still a contested title.

Mr. **Keeney**. Yes, sir.

Senator **Mathias**. Mr. Harvey, maybe you or Mr. Maurer could answer this. Does this bill pose any problems in connection with our treaties with Ecuador, Guatemala, Mexico, and Peru for the recovery of cultural property?

Mr. **Harvey**. Let me defer to Mr. Maurer, if I may.

Mr. **Maurer**. We have only one treaty that deals with cultural property. That is with Mexico. We have signed executive agreements with Ecuador, Guatemala, and Peru—the one with Ecuador is not yet in effect—but these executive agreements are worded so that any remedies must be consistent with U.S. law. So, in one sense, whatever is the U.S. legislation, that is the framework within which those three agreements are to be implemented.

I will say that I think both Peru and Ecuador, say, might feel quite disturbed, or concerned, if we created a law of the United States along the lines of (a)(1), which I agree with Mr. Keeney, is so worded that even the thief could hide the Mona Lisa in his basement for 5 years and then surface it and say, "I'm immune from suit."

So I say that Ecuador and Peru might feel disturbed to find that we had enacted some law which curtailed their ability to get at their property in the United States.

With respect to Mexico, there, our agreement is that we will do all that we possibly can to help them recover their property, but in that agreement, too, there is a provision which says that our action shall be in accordance with U.S. law.

So that if we change the law, that will be the parameter or framework in which Mexico's remedies would have to be pursued. I think, again, Mexico would be quite disturbed that something, which they hoped would be a vehicle for helping them in the recovery of art objects, was suddenly changed to something which in fact debarred them.

And as you may know, we gave them this treaty because they were helping us in a reciprocal way in the collection of U.S. automobiles that had been smuggled across the border, and I think they may very well feel that they will not assist us in that field. Plus, of course, we have other areas, like drugs, terrorism, where we do seek their aid, and that might not be forthcoming if they felt disturbed by what was happening in the United States regarding recovery of their cultural objects.

Senator **MATHIAS**. I should note that the Government of Peru will be submitting a statement for the hearing record, and so we will have some direct comment from Peru.

[The statement referred to above follows:]

STATEMENT OF THE GOVERNMENT OF PERU
CONCERNING S. 1523, THE CULTURAL PROPERTY REPOSE ACT

Washington, D.C., February 4, 1986

This statement is submitted to the Subcommittee on Patents, Copyrights and Trademarks of the Senate Committee on the Judiciary by the Government of Peru with respect to the proposed legislation titled The Cultural Property Repose Act, S. 1523. The Government of Peru is very appreciative of the opportunity afforded to it by the Subcommittee, and particularly by Senator Charles M. Mathias, to present this statement. Senator Mathias is recognized as a staunch friend and supporter of international cooperation in many fields. Thus, we are hopeful that he will receive with attention and understanding the following comments on the bill.

The Government of Peru has noted with interest the testimony of the United States Government witnesses and the opposing witnesses who appeared before the Subcommittee at the hearing held on January 9, 1986. This testimony suggested that (a) museums in the United States were not suffering from a problem of sufficient severity to justify National government intervention in an area traditionally left to State regulation, (b) that the legislation might make it substantially more difficult for a foreign government to protect against thefts from its museums, churches and other cultural sites and against unauthorized and unscientific archaeological excavations, and (c) that the legislation was contrary to the spirit of previous United States efforts to protect the cultural patrimony of other nations.

The Government of Peru will limit its comments in this statement to the areas of testimony referred to.

Do Museums Have a Significant Problem? It has been claimed by supporters of the proposed legislation that Peru has actively asserted a claim to ownership of all antiquities of Peruvian origin in all museums of the United States. This inaccurate and sensational assertion has been put forward as a main example of the "problems" said to be confronted by museums, and thus forms an important part of the justification put forth for the legislation. It is entirely false.

Peruvian law enacted in 1929 has provided that pre-Columbian artifacts not then in private possession are property of the Peruvian state and may not be exported from the country without government permission. We understand that other countries, including Mexico, have similar laws. On a number of occasions in recent years United States Customs officers have intercepted persons bringing such artifacts into the United States and it has been possible for Peru to recover the objects in question. The most notable of these cases have been the recovery from a David Bernstein of over 800 ceramics, textiles and gold objects with a value of $1,500,000, and the recovery from a Leeman Moore of gold burial ornaments valued at $50,000. In addition, several colonial period religious paintings which were identified as stolen from particular churches or museums in Peru have been recovered from an auction house and Peru has made efforts to recover a pre-Columbian textile from a private collector in Texas. The textile in question was specifically identified by photographs as one that had disappeared from the National Museum of Anthropology and Archaeology in Lima.

Efforts by Peru to protect its cultural patrimony were fully supported by the United States, which entered into an executive agreement in 1981 under which both countries pledged to cooperate together in such recovery efforts to the full extent of their laws.

This cooperation is most welcome. There is a continuing and acute crisis in the protection of Peru's cultural patrimony. Peru is the seat of thousands of years of ancient civilizations predating the Spanish conquest. In addition, during the Spanish colonial period, Peru was the cultural and religious center of South America and, with Mexico, one of the two great centers of Spanish culture in the New World. The legacy of Peru's rich history is very difficult to protect in an era in which national income and resources have been depressed by an unprecedented economic crisis. At the same time, increasing world art prices have stimulated the interest of unscrupulous persons in the relatively unprotected burial grounds, museums and churches where Peru's patrimony is now available for the inspiration and education of its people and visitors. The United States has been supportive of Peru's needs, both through the executive agreement and U.S. Customs efforts mentioned and through preliminary conversations with the Cultural Affairs Committee of the U.S.I.A. concerning a new agreement under the Cultural Property Implementation Act (P.L. 97-446) which could well strengthen and deepen the excellent cooperation between our countries in this area.

In all of these efforts there has been no claim made against any U.S. museum for blanket repatriation of Peruvian antiquities, and there is no intention of the part of Peru to make any such claim. Peru has only sought two limited objectives: to prevent dealers from actively exporting antiquities in violation of its laws, and to recover other pieces which can be specifically identified as illegally taken from its museums, churches and similar institutions. It is clear that there must be negotiation and accommodation to achieve even these objectives. To seek a broader recovery of art objects would neither be practical nor in the interests of Peruvian culture, which looks for the support of museums and culturally concerned people throughout the world. To do less than Peru has done in defense of its patrimony, however, would be to disregard its obligations to its laws, its people and its honor.

Increased Difficulties of Protection. Concern was expressed in testimony on the proposed legislation that it would be impossible for a foreign government to review the exhibits, card catalogues and publications of all the many museums in the United States to identify its lost or stolen cultural property, and thus that the bill would in effect make it possible for a stolen piece to be easily legitimized by being placed on exhibit in a small museum for a sufficient number of years. Peru agrees categorically with this point. Many pieces cannot be identified as stolen under even the most favorable circumstances, if they are newly excavated from undisturbed archaeological sites and were never previously catalogued. Even for those which can be, the number of museums in which they could appear makes identification impossible.

Worse yet, legislation of this kind can discourage the efforts now under way to protect Peru's churches and museums. Despite the great difficulties before it of an economic and political nature, Peru is actively maintaining and defending its patrimony. Plans are being prepared for a new home for the National Museum in Lima, where the finest pieces can be properly displayed and protected. Inventories are being prepared of the contents of churches so that pieces, if lost, can be identified and recovered. The gains of these efforts can be nullified, however, if the new law, entirely contrary to the intent of its framers, became a means to "launder" art works. Its effect then would be to stimulate the market, increase activity and prices, encourage thefts and illegal excavations, and make useless the laboriously prepared inventories, which could only be used to identify the lost piece after the period of prescription had run and it had reemerged safely from obscurity.

Consistency with the Cultural Property Implementation Act. In 1982, after many years, the United States was the first major "art-importing country" to adopt and implement the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. That legislation included a provision that objects identified as stolen from museums of other countries may not be imported into the United States, and provided a procedure for bilateral agreements to prevent the importation of cultural property from countries suffering depredation. Consistent with the spirit of that legislation, Peru would certainly hope that the notions of prescriptive rights would not be used indirectly to modify established United States policy which presently supports the protection of cultural property.

In closing, the Government of Peru wishes to express its appreciation to Senator Mathias and the other members of the Subcommittee on Patents, Copyrights and Trademarks for their attention to this statement, and would be pleased, if requested, to provide any further information or assistance that might be useful with respect to this matter.

Senator MATHIAS. I do not want this record, however, to reflect the suggestion that you made, that the Mona Lisa could be stolen and hidden for 5 years, and thereby improve the position of the thief, because I do not think any of us contemplate that. Having stolen it, you would have to exhibit it in some way, in order to start the time running.

Let me just ask a final question to all of you. I suppose part of the motivation for this wave of art thefts that has occurred in recent years is the enormous enhancement in the value of art objects.

Just for one example, the National Gallery of Art purchased a Peale for, I think, $4.7 million. The seller had purchased it not too many years ago for $100,000. Not a bad investment.

These sales, in which enormous profits are made, must of course encourage thieves in thinking that art is a very valuable form of loot.

If we should not go the repose route, and the three of you are unanimous that this is not a desirable step to take, what can we do? What should we do, both from the point of view of discouraging art thefts, and from the point of view of protecting honest, legitimate collectors and museums?

There is a problem. I do not fully agree with Mr. Keeney that we are not faced with a problem yet.

Mr. **Keeney**. Mr. Chairman, my view is a very parochial one, speaking for the Department of Justice. We think that vigorous law enforcement, plus a continued recognition of the common law in so far as the ability of the thief to pass good title, I think those are deterrents, and I think that anything that we do to make it easier for title to property, or the right to possess property that was originally stolen, to accrue, we should move very slowly on.

And I think to the extent that we move away from that area, we are giving some encouragement to the thieves who are going after the high-value art objects.

Concededly, Mr. Chairman, a parochial view from law enforcement.

Senator **Mathias**. I want to propose a hypothetical situation, not to prolong this discussion, but just so I am clear what the Department has in mind. Suppose a thief steals this Rembrandt Peale, takes it home and hangs it over his mantlepiece, in the State of Maryland, and says, "This is a wonderful thing. Rembrandt Peale lived in Baltimore, established the Baltimore Peale Museum. It's great that this picture's here." He shows it to all his friends who come to visit. "Look at my Rembrandt Peale."

None of them happen to say, "Well, that was recently stolen from the National Gallery of Art," and this goes on for 3 years. Not passing this law would be a boon to that thief, because in 3 years, the statute of limitations in Maryland will bar any action against him. He has possessed the painting there. He has been notorious about it. Under this repose bill, however, he would have to wait at least 5 years.

Mr. **Keeney**. Mr. Chairman, I am a Maryland resident but I am not a member of the Maryland bar, and I am not that familiar with the law in Maryland, which I am sure the chairman is.

But I would hope that a court in Maryland, in that particular situation, would not accept that, and would not allow the person in physical custody to retain that custody if it is challenged. I would hope that the courts would find a way to not allow that to happen.

Senator **Mathias**. But is that a possibility?

Mr. **Keeney**. It is a possibility, depending upon the state of the law in a particular State. I concede that.

Senator **Mathias**. And therefore, a 5-year statute would put the original owner in better shape, in that particular set of facts. Let's stipulate, for the moment, that I am stating the law correctly. Under those conditions, a 5-year period in a Federal statute would improve the position of the original owner.

Mr. **Keeney**. But I would hope that the factual situation would be such that the open displaying of the painting would be an environment where you would expect that it would be exposed to people who are familiar with art objects and would know that it was stolen.

If you would just bring my neighbors in, I am sure they would not know whether it was a stolen Rembrandt or not.

Senator **Mathias**. Well, maybe I chose a bad example. I would assume that any Marylander would recognize a Rembrandt Peale.

Mr. **Keeney**. Maybe I should amend my answer, Mr. Chairman.

Senator **Mathias**. Or at least recognize one that has been on the front page of the Washington Post. It might be a lesser Peale: it might be Charles Peale Polk, or some other early artist whose work was not so well known.

Returning to our hypothetical situation, the thief might not only have stolen it, not only hung it over his own mantle, but he might lend it to the Frederick County Historical Society for their annual exhibit. He may perform a number of other acts, even though the work is not as well known, which would clearly establish his claim of ownership. If a thief was bold enough to steal it, I suppose he would be bold enough to think of other things to do to bolster his title.

Then, if there is a 3-year statute of limitation, he is in better shape than if there is a Federal law with a 5-year statute of limitation.

Mr. KEENEY. Mr. Chairman, going back to the original thesis, that I do not think the need has been demonstrated, and in a situation like that, I would hope that the courts of Maryland would construe either the repose statutes of Maryland or the statute of limitations in a manner that would require that sufficient notoriety be given, so that the actual owner has a reasonable opportunity to challenge the title.

Senator MATHIAS. I would hope so, too, but I recall from my law school days that the common law is not very emotional.

Mr. MAURER. I am intrigued by your example, because I think, in fact, the proper example is a much different one, and, in fact, such an example does exist.

We should really be talking about something which was stolen from abroad, and which comes here, and we have an indication of that in the case of the Weimar Museum Dürer paintings, which were stolen during the war, maybe by Germans, or an American G.I., and were sold to a Brooklyn resident, Mr. Elikofon.

He paid $300, or so, for it and he hung it up in his living room. He had it in his living room for 10 years, and he liked the Dürer paintings. He did not know they were Dürer paintings, he said, and he held them in his living room for 10 years.

And the only time he got notice that it was stolen property was when a friend came and said, "My God, I've seen that painting in a list of stolen paintings of the Weimar Museum," and he opened a big book—and there it was. And at that time it surfaced in the New York Times and, immediately, we got requests from the FRG and the GDR, to please recover the painting for them.

And we encouraged the FRG to bring a suit. At that time only the FRG could sue because the GDR was an unrecognized regime, and the FRG brought a suit, and the court held that the statute of limitations did not run for the 10 years while the paintings were in his house, in his living room, and that display did not give anybody in Germany notice.

So, I think you are talking about a special situation, when you are talking about a Rembrandt Peale being located in an adjacent State like Maryland.

Senator MATHIAS. I elaborated my example by saying that in that period of time he loaned it to the local historical society. Had this man loaned it to the Brooklyn Museum, it might have had a different result.

Mr. MAURER. We are talking basically about art of foreign origin coming into the United States.

Senator MATHIAS. The question here is really when you start that statute running. When do you start the period of time running; what act is sufficient to start it? Maybe Mr. Keeney is right. Maybe the courts would find that the statute did not start running, and the judges would be ingenious enough to work that out.

It seems to me that Federal legislation would not put that burden on the judges. It would remove that problem of deciding when the statute starts to run.

I am grateful to all of you for being here today, and appreciate your views. We will take up some of the questions you have raised with witnesses that will follow you.

Our next panel of witnesses will include Dr. James D. Burke, director of the St. Louis Art Museum, and Dr. Peter C. Marzio, director of the Houston Museum of Fine Arts.

Gentlemen, we appreciate your presence here. I should explain our traffic light here to you. For your 5-minute oral presentation you get the green light. If you go over that, the red light comes on.

STATEMENT OF A PANEL CONSISTING OF JAMES D. BURKE, DIRECTOR, ST. LOUIS ART MUSEUM, ST. LOUIS, MO, AND PETER C. MARZIO, DIRECTOR, HOUSTON MUSEUM OF FINE ARTS, HOUSTON, TX

Dr. BURKE. Thank you. My name is James Burke. I am the director and chief executive officer of the St. Louis Art Museum in St. Louis, MO.

I want to thank Senator Mathias, and the committee, for the opportunity to speak today.

I feel that American museums do need a statute of limitations against claims by foreign governments, which would seek the return of works of art and cultural property.

I feel that Senate bill 1523 would meet that need, and I appear here today to heartily approve of the bill, and let you know that the commissioners of the St. Louis Art Museum are on the record as approving of it as well.

There is a great tradition in American museums that is threatened today. For generations, museums in our country have sought to gather together objects which would represent the many cultures of our planet.

Our predecessors have tried to create universal collections which could be preserved and exhibited for the benefit of all of our citizens.

Museums have worked with schools, colleges, and universities to assure the educational utility of these many objects, and we have tried, overall, to bring the world's art cultures to our communities and to our Nation.

These kinds of art objects and artifacts are threatened without the presence of a statute of limitations as proposed here.

Without it, we feel that foreign governments can act capriciously, or politically, to remove these things from our museums, and from our collectors in our country, no matter how long they might have been here, or how legitimately they might have been collected.

The risk to our collections is very evident now. Almost any foreign government could enact a so-called patrimony law.

They could state that anything ever made within the present or past boundaries of their nation was their cultural property. The Peruvians have already done this, and we are concerned, obviously, about others that might do things for political reasons, too.

I do not know that we should be obliged to return all the French paintings in America just because the French got up one morning and decided that they wanted them.

I am not sure that we should return all the ancient Greek art, or Roman portraits which might have been three or four generations in our country, just because a foreign sovereign was angry at the United States, and wanted to use a patrimony law as a kind of retribution. The recent actions of the Rumanian Government in a suit against the Kimbell Museum in Fort Worth are a very active example of this principle at work. The presence of the Peruvian claim to all their pre-Columbian artifacts are causes for alarm to us.

My colleagues and I very much believe that the world is a better place when world cultures are shared, when French paintings are seen in America and American paintings are seen in France, or when schoolchildren of today can learn about ancient civilizations with the firsthand experience that works of art provide.

Selfish and self-serving legislation and acts of foreign sovereigns threatens this very valuable aspect of American life.

I encourage the enaction of the Cultural Property Repose Act to protect our Nation's museums and collections from the foolishness of others. Thank you very much.

[Dr. Burke's prepared statement follows:]

PREPARED STATEMENT OF JAMES D. BURKE

DIRECTOR, THE SAINT LOUIS ART MUSEUM

SUMMARY

The statute of limitations proposed by The Cultural Property Repose Act of 1985 (Senate Bill 1523) is needed by American museums. Collections of works of art and artifacts are threatened by foreign governments who might claim them without regard to how long they mave have been legitimately owned here. The comprehensive, universal character of American museums and their educational missions are thus threatened.

* * *

American Museums need a statute of limitations against claims by foreign governments which would seek the return of works of art and cultural property. The Senate Bill 1523, The Cultural Property Repose Act of 1985, would meet that need. I appear here today to heartily approve of the Bill as written and to let you know that the Board of Commissioners of The Saint Louis Art Museum is on the record as approving it also.

There is a great tradition in American museums that is threatened today - for generations, museums in our country have sought to gather together objects which would represent the many cultures of our planet. Our predecessors have tried to create universal collections which could be preserved and displayed for the benefit of our citizens. We work with our schools, colleges and universities to assure the educational utility of these many objects. In short, we try to bring the world's art and cultures to our communities and to our nation.

These collections of art objects and other cultural artifacts are threatened without the presence of a statute of limitations as proposed by this Bill. Without it, foreign governments can act capriciously or politically to remove these things from our country, no matter how long they may have been in our collections or how legitimately they were acquired.

This Bill would not shield thieves or tomb robbers of archaeological sites; civil law and the UNESCO Convention as enacted in Public Law 97-446 still holds remedies for such activities. And, most important, we should recognize that this Bill complements the UNESCO Convention and does not contravene it. Many of us in the American museum community have worked hard to support the UNESCO Convention on Cultural Property. The repose issue is not addressed there and must now come under our scrutiny.

The risk to our museums's collections is very evident now. Almost any foreign government could enact a so-called patrimony law stating that anything ever made within the present or past boundaries of their nation is their inexorable cultural property. The Peruvians have already done so, but whither the French, the Italians, the Greeks or others? Should we be obliged to return all the Monet paintings in America just because the French might demand them one day? Should we return ancient Greek vases or Roman portraits which might have been in our collections for three generations just because someone was angry at the United States Government one day and wanted to use a patrimony law as retribution?

While it is an interesting intellectual argument to insist that everything made in a cultural past is the property of its people in the present day, it is really a matter of ideals rather than practical reality. If we have acquired such art works or artifacts legally and in good faith, and preserved and utilized them in a responsible manner, why should we not retain them?

Nonetheless, the recent actions of the Rumanian Government in suit against the Kimbell Art Museum in Fort

Worth, Texas, and the presence of the Peruvian claim to all Pre-Columbian artifacts, are cause for alarm.

My colleagues and I believe that the world is a better place when world cultures are shared; when, for example, French paintings are seen in America and American paintings are seen in France, or when schoolchildren of today can learn about ancient civilizations with the first-hand experience that works of art and artifacts provide. The selfish, self-serving legislation and acts of any foreign sovereign threatens this valuable aspect of American life. I urge you to enact the "Cultural Property Repose Act of 1985" as prosed here, to protect our nation's museums and collections from the foolishness of others.

Senator MATHIAS. Thank you, Dr. Burke.

Dr. Marzio.

STATEMENT OF PETER C. MARZIO

Dr. MARZIO. Mr. Chairman, it is a privilege to be here. My testimony is too long to read. I just want to echo Dr. Burke's sentiments.

Since I have been in museum work, which was begun in 1968 at the Smithsonian, this issue about clear title of artifacts from foreign countries has come up repeatedly.

The Unesco Convention was a major first step in helping clarify the situation, and the Implementation Act that the House and Senate passed in the early 1980's was the second major step.

I see S. 1523 as being a forthright and intelligent attempt to go yet another step in clarifying title. While critics of the bill have suggested that there doesn't seem to be need for it, I would suggest that the sort of misty character, which right now hangs over so many collections because of the right of foreign countries to come into virtually any court in the United States and lay claim, is beginning to be and will continue to grow as a heavy burden on American museums.

Dr. Burke mentioned the case of the Rumanian Government and its charges against the Kimbell. Those proceedings have just begun in a preliminary manner, and the fees have already exceeded $100,000, and they have not even really begun to deal with the issue. For a wealthy museum, that may not be a difficult burden, but for most of us it would be close to catastrophic. I like S. 1523 because it embodies four basic principles that are straightforward, and they achieve a reasonable balance—and I think balance is the key word—between the legitimate concerns of museums and private collectors and the interests of foreign sovereigns.

And those four points are: One: That it is appropriate to establish a uniform, nationwide, statute of limitations, in order to protect museums and collectors from unreasonable claims by foreign sovereigns for return of items of cultural property held in the United States.

Two: For items that are designated pursuant to the Unesco Convention, it is reasonable to apply to foreign sovereigns the same limitation periods that are applicable to seizure actions by the United States by virtue of the 1983 implementing legislation.

Three: It is appropriate to have shorter limitation periods for items that are outside the scope of the Unesco Convention and implementing legislation.

And four: It is appropriate to establish a shorter repose period for items that came into the country before enactment of the legislation than for items that are imported subsequent to enactment, when the legislation itself can have an impact on the decision whether to acquire or import a given item.

Mr. Chairman, I am not a lawyer by training and I do not pretend to be one. I am a museum professional. All I know is that at the present time we have a problem which will only get worse.

I am looking for a fair and balanced mechanism to make the situation of ownership of objects in American museums and private collections clear, because I do not want to see the enormous momentum that has occurred in museum life in the last 20 years halted.

To me, one of the great accomplishments in American society in the last two decades has been the phenomenal response of the American public to the educational and cultural advantages of museums, and anything that would impair that would seem to me to be a step backwards. Thank you.

[Dr. Marzio's prepared statement follows:]

PREPARED STATEMENT OF PETER C. MARZIO

My name is Peter C. Marzio, and I am the Director of The Museum of Fine Arts, Houston, Texas. I want to thank this Subcommittee for the opportunity to appear before it today.

The Museum of Fine Arts, Houston has an unusually fine and extensive collection of art, archeology and ethnology from many different cultures and periods in history. We are very proud to be able to offer this collection for the enjoyment and education of our many visitors. The Museum of Fine Arts, Houston, and the many other museums across the United States, preserve and protect much of the cultural heritage of the world, and make it available for any one to see.

However, foreign governments are attempting by civil suit and threats of civil suit to claim works of art that have been held in the United States for many years by museums and collectors who acquired them in good faith. An example is the recent suit by the Rumanian Government against the Kimbell Art Museum in Ft. Worth, Texas, claiming a painting by El Greco. Another example is the Government of Peru, which is actively claiming title to all pre-Columbian artifacts from that region by virtue of a 1929 "patrimony" law, no matter how long the artifacts have resided in the United States.

The question before this Subcommittee is whether museums such as the one I represent, or the collectors from whom we obtain most of our objects through purchase, donation or bequest, should be exposed to the loss of those objects because foreign governments can take advantage of anomalies in state statutes of limitations to sue for the possession of items that have been held in this country openly and for extended periods of time. Let me explain.

Many countries of origin of archeological and ethnological objects are becoming increasingly active in protecting and preserving their cultural heritages. While this in many instances has meant better protection of significant archeological sites and the restoration and protection of excavated objects, it has also started the growing trend of litigation, or threat of it, that I just mentioned. It is often directed at objects that have been held long, openly and legitimately in other countries. I believe that such litigation wastes valuable resources of the museum that must defend against it, and uses resources of the plaintiff country that could be expended in excavating and preserving sites. The threat of such litigation may stop the work of legitimate collectors, such as museums, and serve only to drive the collecting of such artifacts underground or to foreign art markets.

This problem of foreign government litigation occurs in this country due to the combination of several factors. First, such litigation is now encouraged by anomalous state statutes of limitation that oftentimes look to the date of a foreign government's demand for the cultural property to start the limitation period running, rather than to the date of the original export from the country of origin, the date of import into the U.S., or other relevant date. Thus, foreign governments may well be able to sue in the United States for the possession of objects that left their countries in the distant past, even when their own laws would bar a reciprocal suit by the United States Government to recover property held within their borders.

Such state laws allow the foreign governments to hold all the cards. In the State of New York, for example, there is a rule announced in a case named Menzel v. List, 253 N.Y.S.2d 43 (App. Div. 1964), in which the statute of limitations for art objects does not begin to run until the claimant of that object makes an actual demand upon the holder for its return, and its demand is refused. Of course, the practical effect of this rule is that the New York statute of limitations never grants repose. For a foreign government plaintiff, this means that it has no obligation or incentive to pursue its rights with diligence or promptness.

The second factor is that governments are perpetual and may make a legal claim to an object long past the time when it is possible for the defendant to establish its legal chain of title. Documents get lost. Memories fade. People move or die. Thus, a foreign government can take advantage of the simple fact of life that defendants become unable to defend after the passage of time, even though a full and complete defense may exist.

From the museum director's perspective, this is a very serious problem. It means that no matter how careful a museum may be, it can never be sure that its collection is safe from suit by a foreign government. A rule such as the New York rule means that the simple passage of time, which grants repose to the holding of any other type of personal property, will not grant repose to the holding of objects of art.

The problem is what to do, and I believe that S. 1523 is the answer. S. 1523 embodies four basic principles that are straightforward and achieve a reasonable balance between the legitimate concerns of museums and private collectors and the interests of foreign sovereigns:

1. It is appropriate to establish a uniform (i.e., nationwide) statute of limitations in order to protect museums and collectors from unreasonable claims by foreign sovereigns for return of items of cultural property held in the United States.
2. For items that are designated pursuant to the UNESCO Convention, it is reasonable to apply to foreign sovereigns the same limitation periods that are applicable to seizure actions by the United States by virtue of the 1983 implementing legislation (Public Law 97-446).
3. It is appropriate to have shorter limitation periods for items that are outside the scope of the UNESCO Convention and implementing legislation.
4. It is appropriate to establish a shorter repose period for items that came into the country before enactment of the legislation than for items that are imported subsequent to enactment when the legislation itself can have an impact on the decision whether to acquire or import a given item.

Under these principles, S. 1523 is the fair and balanced median approach between closing the doors of our courts to foreign governments and opening the display cases of our museums to them. It would create a clear federal rule under which foreign governments will be given ample time to locate and sue for the recovery of objects that they believe should be returned but not so much time that legitimate defenses by holders in the United States will become lost or unprovable.

The starting point for understanding S. 1523 is the 1983 Implementation Act for the UNESCO Convention on Cultural Property. S. 1523 complements the Implementation Act and encourages the use of it and the UNESCO Convention by other countries. It brings rationality and consistency to the differing laws applicable to the holding of artistic property in the United States and would provide assurance to U.S. museums and collectors that they can gain repose from costly litigation if S. 1523's conditions and time periods are met.

The UNESCO Convention is an international response to the pillage of countries' archeological sites and the illicit export from those countries of important cultural materials. It is an attempt to create a system of international regulation to prevent unauthorized excavation and illicit export, while encouraging the legitimate interchange of cultural properties between nations. It operates by a trade restriction banning import of cultural property into a signatory country unless an export certificate for that cultural property has been issued by the signatory country of origin. Forty-five countries, including the United States, are now signatories to the Convention.

The United States has implemented the Convention with a carefully crafted law codified at 19 U.S.C. § 2601, et seq. In brief, the Implementation Act requires that signatory countries designate those types of archeological or ethnological objects that are to be subjected to the trade restriction. Such objects may not be imported into the United States without the export certificate from the country of origin called for by the Convention. For designated objects that enter this country in violation of the trade restriction, the Implementation Act sets up a sliding scale of repose periods for actions for seizure by U.S. Customs officials. These periods depend on the openness with which the objects are held or displayed, and a good faith purchaser for value gains repose in 20 years, while a museum may gain it in three years if the object was exhibited for periods aggregating one year of those three. No repose is given to a thief.

S. 1523 would apply, in civil suits by foreign governments, the letter and spirit of the regime imposed by the Implementation Act on actions by Customs. For objects that have been designated by signatory countries to the Convention,

S. 1523 applies the terms and conditions set out in the Implementation Act. Thus, the holder of a designated object in the United States would not gain repose from civil suit by the signatory government until it gains repose from the Customs Department. This is fair, uniform and rational.

For objects that have not been designated by a signatory country to the UNESCO Convention, a similar, though somewhat shorter, set of repose periods is created. Thus, a good faith holder may gain repose for an undesignated object in ten years, while a museum may gain repose in two years if, for that period, the institution has made knowledge of its holding public through such actions as exhibition or publication in a catalog.

The reason for shorter repose periods is simple. Under the Implementation Act, it is the process of designation that is to establish whether archeological or ethnological objects are or are not important enough to a signatory country to deserve the protection of the UNESCO Convention's trade restriction. Trade in undesignated objects are not subject to any trade restriction whatsoever. S. 1523 establishes shorter repose periods for undesignated objects because their countries of origin have not indicated that they are deserving of special protection. This Subcommittee should note, however, that the ten-year repose period for good faith holders under S. 1523 is much longer than the repose periods (e.g., two years in Texas) established under many state laws for actions to recover personal property. Thus, S. 1523 would keep the doors of our courts opened to foreign countries longer than is provided in many state laws today. What it would cut off is the ability of foreign governments to initiate actions long after U.S. defendants have had defenses become unknown or unprovable.

Let us examine alternatives to S. 1523. The Congress could do nothing at all, and leave the matter to the erratic workings of state laws. In New York, that might mean that no museum or collector could ever be sure that an art object was safe from suit by a foreign government, no matter how long or openly it has been held. By contrast, in my State of Texas, which has a two-year statute of limitations for personal property, it could mean that foreign governments would be shut out of the courts before the time that they would legitimately need to locate and sue upon objects of cultural heritage. This would result in piecemeal and inconsistent litigation of a problem that is both national and international in scope, and I do not think that Congress should leave this matter to state law. I think that a consistent, rational federal rule is necessary.

We could go to a fixed federal limitations period for the holding of archeological and ethnological property, such as two years. However, Congress has already passed the Implementation Act which uses a clear and intelligent sliding scale of repose periods. I do not advocate the creation of a different or conflicting set of laws that would leave museums and collectors in doubt about how to follow them, and courts in doubt about why such a different set was established. Rather, I believe that Congress should pass S. 1523, which is faithful to both the letter and the spirit of its previously enacted Implementation Act.

What would be the effect of such passage? First, I believe that it would keep open the U.S. art markets that the litigation activity and threatened litigation that I mentioned before is threatening to close or drive underground. For example, Peru poses a serious threat because there has not been legal authority in Peru for the exportation of

Peruvian archeological or ethnological material since 1929. It is apparent, therefore, that a significant quantity of Peruvian material in this country could be subject to suit by the government of Peru although it may well have been held and displayed openly in this country for more than 50 years. Any other type of personal property would long have been in repose. S. 1523 would keep open the trading and holding of such artifacts in this country, under terms and conditions of repose that would be fair to U.S. collectors and yet give a government, like that of Peru, ample opportunity for suit. If the U.S. markets were closed, objects would easily be absorbed in the thriving markets of Europe and Japan. The loser would be those citizens and visitors to the United States who would not see objects that could otherwise be held openly and publicly here.

Passage of S. 1523 would encourage countries to use the UNESCO Convention and our Implementation Act, because designation by a signatory country of any type of archeological or ethnological artifact would gain for it the longer periods of repose now applicable to actions for recovery by the Customs Department. At present, however, only Canada has ever requested that anything be designated pursuant to the Convention, and that occurred just two months ago. Foreign governments should not be heard to complain about the U.S. art markets until they have made use of the import restriction provided for them in our law by the Implementation Act.

Thievery from countries of origin would be discouraged. At present, stolen archeological or ethnological artifacts can gain repose in many states in two years. S. 1523 denies repose forever for thieves. In this regard, moreover, the Subcommittee should note that many other countries have repose periods that are much shorter than those in the United States.

Thus, many foreign governments already have greater access to our courts than the U.S. government or its citizens have to theirs, and S. 1523 would given them even greater access.

In summation, S. 1523 creates a balanced, rational approach to a difficult problem. It would neither close the U.S. art markets nor provide encouragement to the illicit excavation of foreign countries' archeological sites. It would maintain the right and ability of U.S. museums to gather archeological and ethnological objects to enrich our own culture with the arts and cultures of others while preserving the right and ability of foreign countries to seek the repatriation of objects that should be repatriated. S. 1523 would provide a uniform federal rule to a national and international problem, and it is consistent with the UNESCO Convention and our Implementation Act. It should be passed.

I thank the Subcommittee for this opportunity to be heard.

Senator MATHIAS. Thank you, Dr. Marzio. Let me just ask both of you, directly, the question that has been posed by the Justice Department in the testimony that you just heard.

Is there a need for this kind of legislation? Both of you seem to indicate there is, but let's lay it out.

Dr. BURKE. I feel that there is, in the sense that the Rumanian and Peruvian situations are very active, the Rumanian one being very directly active, and the Peruvian bill seeming, on the surface, to be the kind of thing that we should respond to. I agree with Dr. Marzio, that for most museums in the United States, even the midsize cities like ours in Houston and St. Louis, it would be just about catastrophic for us to defend ourselves in situations like this. I think for the smaller museums, and colleges, and small towns, it would be impossible and they would virtually have to turn over the objects without a fight, because they could not afford the defense.

I feel that there is an increasing tendency, for political reasons, around the world, for archaeologists and anthropologists, and people in many other countries, to look upon their culture in a very nationalistic way, to look upon other countries as the "captors" of their culture, if you will. I think that as that attitude grows, we have become more alarmed in the last decade, as we have heard more and more, and more commentary threatening these kinds of actions.

I think in countries where the United States has difficult relationships, such as Nicaragua, for example, and yet where there are many pre-Columbian Nicaraguan objects in American collections, that kind of thing clearly comes to the fore in the wake of Peruvian actions.

Dr. MARZIO. I agree with the two major points, of the cost burden regarding legal activity, and second, the rise of nationalism, particularly in South America, Africa, and Asia.

And it is hard to say what is going to happen. We are not clairvoyant. But with the situation as vague as it is now regarding ownership, it is hard to imagine museums being able to think about encouraging private collectors, who, in the end, will be contributing works to the museums.

I certainly hope that people who are against this bill are not against honest collecting. That would be a very sad situation and I think that anything that will help set the ground rules and make them clear will be the greatest service, both in the cause of foreign nations seeking repatriation, and second, in the cause of private collectors and museums in the United States.

Senator MATHIAS. Does this bill, however, give a windfall to the museums? I ask you to be as objective as you can about that. Is this a windfall for museums?

Dr. BURKE. I think that, as I understand repose, it is a matter of drawing a line somewhere. There very well may be some instances of windfall; there very well may be not instances of windfall.

If one sets a statute of limitations, and a certain time period is drawn—whatever that may be—and I find the terms in this bill very acceptable, but I think they are, as you suggested, very negotiable.

I think in that case it is very likely that something like that might happen. It is very hard to tell. In our collections, and many other larger museums that I know, institutions have, long before Unesco, worked very hard to ensure the legitimacy of their collections, trying to make certain that the things which were coming into their collections, whether by purchase or by gift, had good clear titles, and did come into the United States properly, and so on.

And I think that reputable institutions have tried, in good faith, to live up to that.

Senator **Mathias**. Of course, the record is not absolutely clear on that.

Dr. **Burke**. That is correct.

Senator **Mathias**. Some reputable institutions have been alleged to have done some pretty disreputable things. There was a famous case in Boston where the Boston Museum was involved in an unhappy episode a few years ago. Thus, just because it is a museum does not mean that it is necessarily going to be a legitimate transaction.

Let's look at the specific provisions of this bill. It establishes three levels of repose. The shortest level is 2 years for museums which make their acquisitions public. If you put an object out in a display case, and label it, you are about as notorious as you can be. The repose period is 5 years for a private holder if the ownership was made public for 3 of the 5 years. That addresses Mr. Maurer's *Weimar* case, because you could not just hang it over your mantlepiece. You would have to have loaned it to the Brooklyn Museum during that time.

In the last level—10 years—there is an exception for objects that a foreign government can prove that the holder knew were stolen. Should this exemption—that is, the exemption for objects that the holder knew were stolen—apply to all three of these levels in order to be fair? Would that strengthen this bill to the extent that it ensures that we are protecting only the legal trade in cultural property?

Dr. **Marzio**. I feel that it would. I have no trouble with the extension of that into the 5- and the 2-year periods. It would perhaps even make the bill more consistent.

Dr. **Burke**. I feel the same way. Why not deny repose to those who steal, to those who have guilty knowledge? I think it would be a very good item.

Senator **Mathias**. Were this exception included in all three levels of repose, a case like the *Weimar* case would not have turned out otherwise, even if this bill had been on the books.

As you have already commented, Dr. Burke, the question of what is long enough is a matter of judgment. Do you think that the periods of repose that are specified are reasonable in length, or should there be some way to improve the likelihood that foreign governments would have fair notice before their right to take action is terminated?

Dr. **Burke**. Well, I think the periods of repose, as presently defined, are very reasonable. One might look at a number of other countries, and we are given to understand, for example, that Peru has a statute of limitations of only 2 years, if an object is acquired in good faith, and only 4 years if it is acquired in bad faith. Other countries, France, for instance, only 3 years; Great Britain, 6;

Equador, 3; Colombia, 3. It seems to me, from what we understand about the statutes of other countries, that our proposals vetted today would be not only reasonable but perhaps even generous.

However, I would certainly leave that to someone else's judgment.

Senator MATHIAS. Dr. Marzio, some of those who oppose this bill do so on the ground that it will encourage trade in stolen cultural property. How would you respond to that?

Dr. MARZIO. Well, a number of the people have said that, but it is not clear to me how that would occur. I mean, as I see the bill as a layman, I do not see the provisions for hiding.

I mean, if anything, I think it makes a lot clearer than the present situation, that opportunity. I mean, as a museum professional, I know right now the situation is not good, and this seems to me to be a very clear effort to say what is legal ownership and what is not.

It almost strikes me as a red herring, that issue, but, you know, if I could have a clearer idea of what an example would be, that would make it more attractive to become a thief under this law, I could probably respond in a more specific way.

Senator MATHIAS. I am not sure that I could help you on that, because it does seem to me that this does not improve the thief's position. He cannot steal an object, store it for an extended period of time until it cools off, and then immediately bring it to market. It is only when he unveils it that the time limits begin to run, and that is very specifically provided in the bill.

Let me ask both of you this question: What should the Federal Government be doing in response to the growing problem of art thefts and the illegal trade in art?

Dr. BURKE. Well, I feel very strongly that the police departments, and FBI, Customs, people like this, should be actively and energetically pursuing people who steal things, and I think that they should catch the bad guys and prosecute them, and I think that probably would be the most effective thing I can think of.

Senator MATHIAS. I have no reason to believe they are not doing all they can.

Dr. BURKE. I hope they are doing it energetically.

Senator MATHIAS. Is there anything other than that that we should be doing?

Dr. MARZIO. Sir, it is not inconceivable to me, that maybe even some relationship to this bill, that from the time the bill is enacted, perhaps there is a central service somewhere, where, if you are a purchaser, and you are an honest person, and you simply want to purchase a beautiful work, it would seem to me that it might be possible that there is a group, or an administration, or an agency that you send the information to, of the work that you have either acquired, or plan to acquire.

It might be a photograph and a physical description of it, with the claims of the seller to find out from this agency if it is clean, if it has been stolen, or not.

It is hard to be an intelligent purchaser nowadays, often, as it is to catch the "bad guys," if you wish. I mean, that is sort of a naive suggestion, perhaps, but——

Senator **Mathias**. I am not sure that it is, and frankly, I am not sure that that would not be possible today. If an object were to be reported stolen, it would seem to me that the FBI would have some notice of that. How much bureaucratic difficulty you would run into in being advised what is on the FBI list, I do not know. That is a question we might pursue: whether or not a purchaser could make an inquiry of that kind. I am sure the information is available for any stolen good, but whether that is available to the general public, or only to law enforcement officials, is a question that we will pursue. It is an interesting suggestion.

We appreciate you both being here, and we will benefit from your advice and counsel.

Our next panel includes Mr. William Bright Jones, president of the International Foundation for Art Research, and Dr. Mark P. Leone of the Society for American Archaeology.

Gentlemen.

STATEMENT OF A PANEL CONSISTING OF WILLIAM BRIGHT JONES, PRESIDENT, INTERNATIONAL FOUNDATION FOR ART RESEARCH, NEW YORK, NY, AND DR. MARK P. LEONE, SOCIETY FOR AMERICAN ARCHAEOLOGY, WASHINGTON, DC, ACCOMPANIED BY DR. PHILIP SPESER

Mr. **Jones**. I know you have admonished us, Mr. Chairman, to hold our remarks to 5 minutes, and I hope you will permit me an extra 2 minutes in my introductory remarks. Still, I am cutting short what I think is necessary.

Senator **Mathias**. All right.

Mr. **Jones**. Since 1975, our principal activity has been to collect information on stolen art. We now publish this data 10 times a year in our magazine, IFAR reports. Our records are accessible to all and have aided directly in many art recoveries. Our work is international in scope.

We have close ties with Interpol, and, of course, the different law enforcement agencies in this country: local police, the FBI, and Customs.

As the Cultural Property Repose Act is drafted, it has the laudable aim of protecting U.S. collectors, both institutional and private, from nuisance suits by foreign states to recover art they claim is stolen.

In assessing the merits and potential impact of the act, IFAR's approach has been to weigh the likelihood and possible frequency of those suits against the provisions which make it more difficult for foreign states to seek the return of stolen art.

On balance, IFAR believes that this act would establish too many unjustifiable barriers to recovery by theft victims pursuing what, in many instances, must be legitimate claims.

We acknowledge how desirable it is for museums, and other holders of art, to have clear title to works in their possession.

IFAR's reporting on cultural property laws and suits by foreign states has been extensive, and our research shows that such suits have in no sense been a problem for U.S. holders.

In a recent issue of the Museum News, the publication of the American Association of Museums, members were asked to report on any suits by foreign states.

It is our understanding not a single museum reported such a suit. Obviously, the Kimbell Museum did not respond to this questionnaire. But I obtained this information from the Association of American Museums.

Senator MATHIAS. I understand there are two pending suits by foreign governments at the present time in the U.S. courts.

Mr. JONES. I know of only the one in the Kimbell.

To examine the disclosure provisions through which museums are expected to exercise their prescriptive rights, the act puts the burden of locating the work of art on the aggrieved party, and requires that it be found in exhibitions, exhibition catalogs, or catalog cards.

There are several thousand museums in this country, with those of any consequence committed to a policy of mounting a regular series of exhibitions.

Monitoring these exhibitions would be next to impossible for the original owner, especially foreign owners. Publication in a museum catalog provides little more assurance of adequate disclosure, as checklists are many times inadequate, and catalogs that accompany exhibitions are illustrated on a highly selective basis.

Even less persuasive is the provision that a museum's card catalog file provides disclosure. Setting aside the physical impossibility of checking the catalogs of all the museums in America, the fact remains that even the best-funded and most fully staffed museums, such as the Metropolitan Museum of Art in New York City, are frequently years behind in entering information on their acquisitions into their card files. For a variety of reasons, entirely unrelated to questions of theft, the card files omit information or photographs which might be critical in identifying a work of art.

For example, the curatorial staff may not be able to determine, in timely fashion, questions of dating or attribution needed for a card catalog.

I would like to skip over my objections as they pertain to the private collector, and turn to two recommendations which we would like to put forward.

First, consideration should be given to establishing a central registry for museums or collectors who wish to enjoy immunity from lawsuits. The Archive, supervised by, say, U.S. Customs, would be limited to only objects which might represent potential problems, with filings made on an annual basis. The holders would offer the good faith of filing, and the victim would have only to check a single location.

Second, we would like to bring to your attention a recently enacted California statute (section 338 of the California Civil Code).

This law establishes a statute of limitations of 3 years for suits to recover stolen art, and the 3-year period only begins to run when the aggrieved party, his or her agent, or the law enforcement agency that originally investigated the theft, discovers the whereabouts of the work of art. It assumes that the victim will not delay in asking for return, and that within the period of 3 years, should the present holder refuse return, the theft victim will sue to recover.

That concludes my formal statement.

[The following statement and letter were submitted for the record:]

PREPARED STATEMENT OF WILLIAM B. JONES

I am William B. Jones, President of the International Foundation for Art Research, generally known as IFAR. We believe our long history of involvement with so many aspects of stolen art puts us in a unique position to comment knowledgeably on certain provisions of the proposed Act.

Background and Purpose of IFAR

Founded in 1969, IFAR serves as an informational resource for the entire art community, drawing support from museums, private collectors, dealers and law enforcements agencies. We are a not-for-profit organization and derive more than half our funding from grants and contributions.

Since 1975, our principal activity has been to collect information on stolen art. We now publish this data ten times a year in our magazine, IFARreports. Our records are accessible to all and have aided directly in many art recoveries. Our work is international in scope. We have close ties with Interpol and, of course, the different law enforcement agencies in this country: local police, the FBI, and Customs.

Summary Comment

As the Cultural Property Repose Act is drafted, it has the laudable aim of protecting US collectors, both institutional and private, from nuisance suits by foreign states to recover art they claim is stolen. In assessing the merits and potential impact of the Act, IFAR's approach has been to weigh the likelihood and possible frequency of these suits against the provisions which make it more difficult for foreign states to seek the return of stolen art and cultural property. On balance, IFAR believes that this act would establish too many unjustifiable barriers to recovery by theft victims pursuing what in many instances must be legitimate claims.

The Position of Museums

We acknowledge how desirable it is for museums and other holders of art to have clear title to works in their possession. IFAR's reporting on the cultural property laws and suits by foreign states has been extensive, and our research shows that such suits have in no sense been a problem for US holders. In a recent issue of the Museum News, the publication of the American Association of Museums, members were asked to report on any suits by foreign states. It is our understanding not a single museum reported such a suit.

We would like to examine the disclosure provisions through which museums are expected to exercise their prescriptive rights. The Act puts the burden of locating the work of art on the aggrieved party and requires that it be found in exhibitions, exhibition catalogues, or catalogue cards. There are several thousand museums in this country, with those of any consequence committed to a policy of mounting a regular series of exhibitions. Monitoring these exhibitions would be next to impossible for the original owner, especially a foreign owner. Publication in a museum catalogue provides little more assurance of adequate disclosure, as checklists are many times inadequate and catalogues that accompany exhibitions are illustrated on a highly selective basis.

Even less persuasive is the provision that a museum's card catalogue file provides disclosure. Setting aside the physical impossibility of checking the catalogues of all the museums in America, the fact remains that even the best-funded and most fully-staffed museums, such as the Metropolitan Museum of Art in New York City, are frequently years behind in entering information on their acquisitions into their card files. For a variety of reasons, entirely unrelated to questions of theft, the card files omit information or photographs which might be critical in identifying a work of art; for example, the curatorial staff may not be able to determine, in timely fashion, questions of dating or attribution needed for a card catalogue.

The Position of Collectors

Turning from museums to collectors, we find that this Act would give immunity from suits to those who comply with requirements which in no real sense allow a theft victim to know the whereabouts of the work of art. As mentioned, there are thousands of museums and institutions where works can be exhibited, many with only local appeal, and small chance that news of exhibitions will spread overseas.

An additional qualifying provision is for the work to be shown to a scholar or expert. We can state from wide experience that it is a rare academic who is aware of any but the most publicized art thefts, either recent or in the more distant past. These scholars simply do not have listings of stolen art, worldwide, to refer to. We also speak from experience when we say these experts are reluctant to get involved in situations which can lead to legal wrangling or litigation, not to mention their fears of actions for personal damages.

Equally troubling is the provision that in order to bring a suit for recovery, a foreign state must demonstrate the holder has "actual knowledge" of the theft. IFAR has few records of any collector buying an object directly from the thief. Typically, stolen art, like many other stolen items, changes hands at least several times before rising to the level in the marketplace where a curator or collector would "discover" it. At that point, it bears no trace of the initial transaction between the thief and the first purchaser, perhaps the only one in the chain who knowingly acquired a stolen piece. Unless a work of art is famous or part of a well-publicized theft like those at the Musee Marmottan in Paris or the National Museum of Anthropology and History in Mexico, there is small chance that the collector will even suspect that the work was stolen.

As drafted, this Act specifies different periods of time for the categories of holders defined in the legislation. In our view, these various time periods tied to the date of enactment of the legislation terminate too abruptly the victims' opportunities to recover property. The provision granting relative immunity from prosecution for any object held for five years prior to the passage of the Act seems blatantly over-protective of US holders.

Recommendations

IFAR would be remiss if it gave testimony reflecting only our objections to the Act. Let me make two suggestions which in our view would improve the proposed legislation.

First, consideration should be given to establishing a central registry for museums or collectors who wish to enjoy immunity from lawsuits. The Archive, supervised by, say, US Customs, would be limited to only objects which might represent potential problems, with filings made on an annual basis. The holders would offer the good faith of filing and the victim would only have to check a single location.

Second, we would like to bring to your attention a recently enacted California statute (Section 338 of the California Civil Code). This law establishes a statute of limitations of three years for suits to recover stolen art, and the three-year period only begins to run when the aggrieved party, his or her agent, or the law enforcement agency that originally investigated the theft, discovers the whereabouts of the work of art. It assumes that the victim will not delay in asking for return and that within the period of three years, should the present holder refuse return, the theft victim will sue to recover.

It is our conviction that if provisions following the California legislation were incorporated in the Act, they would tend to strike an equitable balance among all the concerned parties.

We wish to thank the Subcommittee on Patents, Copyrights, and Trademarks for allowing IFAR to present its views, and we hope the Committee will give consideration to the ideas and proposals we have put forward.

International Foundation for Art Research,
New York, NY, March 26, 1986.

Hon. Charles McC. Mathias, Jr.,
Subcommittee on Patents, Copyrights and Trademarks, Committee on the Judiciary, U.S. Senate, Washington, DC.

Dear Senator Mathias: I would like to follow up on one aspect of my testimony of January 9, 1986, on S. 1523, the Cultural Property Repose Act.

One of the recommendations IFAR made was for consideration of a central registry where museums and collectors would record works of art which might represent potential problems. Under such a system the holders would offer the good faith of filing and the foreign states would only have to check a single location.

In this letter I would like to advance the idea that our organization is ideally suited to undertake such an archive on a contractual basis with the appropriate branch of the government. Our experience in maintaining an art archive has developed over a number of years, enabling us to solve the problems involved in operating a file of this complex nature.

Starting in 1976, IFAR began to collect data on stolen art of every description. As the reputation of the service became better known, contacts were developed with the police, the FBI, Interpol and, of course, with any museum or collector who experienced a theft or recovery.

Today, there is data on nearly 25,000 works covering 4,100 thefts. The archive is unique in its breadth of coverage and has information on paintings, photographs, prints, sculpture, oriental art, ethnographic art, ancient art, selective folk art, the decorative arts, and related areas such as rare books and coins.

Several years ago we developed a computer program to record this wide diversity of art. After a thorough review, the program was adapted by several Interpol offices and is presently under review to become the system used worldwide.

Ten times a year we publish *IFAR reports,* with news on works of art which have been stolen and recovered, so there is also the experience of disseminating this archival data should the need arise.

IFAR is a not-for-profit foundation which receives the majority of its revenues from individuals, corporations, and foundations. Support is received from such foundations as the William Randolph Hearst Foundation, the Mary Duke Biddle Foundation, Samuel H. Kress Foundation, and The Lila Acheson Wallace Fund.

Our involvement would certainly be in accord with the concept of the privatization of government functions, and we believe our staff has the skills and experience to do an effective job and to perform this function at a minimum cost.

If you have any questions about how we propose to function in this project or about IFAR itself, my 800 number is 558-0106.

Sincerely,

William B. Jones,
President.

Senator **Mathias**. Thank you very much.

Dr. Leone.

STATEMEMT OF MARK P. LEONE

Dr. **Leone**. Senator Mathias, I am Mark P. Leone, and I represent the Society for American Archaeology. I am a member of the executive committee, and I am accompanied today by Dr. Philip Speser who is the Washington representative of the Society for American Archaeology.

I am a member of the Department of Anthropology at the University of Maryland, College Park, and I am an archaeologist.

Four years ago I worked with St. Clair Wright at historic Annapolis, and the university, to found a project called Archaeology in Annapolis. The purpose of the project is to explore the archaeological record of the State capital for the 18th and early 19th centuries.

One of the major agreements that we made when founding this archaeological project was that we would train archaeologists to explain the archaeology to the visiting public on a walk-in basis.

We do not have costumed guides and we do not have interpreters. Rather, a theater producer from Baltimore, Phillip Arnow, was hired to train the scientists, to explain the otherwise meaningless archaeological record to the public.

We have given tours to 30,000 people in Annapolis in the last four summers, and we are, of course, grateful for the help you have given us.

The point in my telling this is that the legislation that we are talking about, and which the society opposes, involves archaeological materials.

The society, concerned with archaeological materials, must protect the context which provides the meaning, and the only source of meaning for all archaeological materials. So, we are opposed to anything that encourages looting, or to be neutral about it, the removal, unscientifically, or in an undisciplined fashion, of objects from the ground, or from their architectural context.

We say this for two reasons. Increasingly, in the world today, nations are seeking to enhance their identity through a systematic exploration of their past through archaeology. And since many have no written record, but almost all have an archaeological record, it is crucial that in the course of—not the pejorative nationalism that we have just heard about, but the development of the identity of nation-states, which is perfectly legitimate in almost all cases—it is crucial that the context of artifacts be retained. Anything that would enhance the illegal sale of artifacts abroad, we feel, would be detrimental to local archaeology. Unfortunately, increasingly, around the world, there is a great deal of that.

Second from the point of view of this country, and what we can call the art historical appreciation of archaeological materials and the anthropological appreciation, there is no real capacity to appreciate, if the context in which the material is found is disturbed, or otherwise explored in an unscientific or an undisciplined fashion.

The next point I would like to make, Senator, is that over the years, it has become increasingly difficult for professional archaeologists, whether they be anthropologists like myself and the other members of the society, or classical archaeologists who are art historians, or historians, or classicists, to excavate freely under the guidance of their own discipline in countries abroad. Anything that would make a foreign government suspicious of members of our profession, I think we have to be very serious about. It may be a bit selfish, but we feel that the most important, scientific way of exploring the archaeological record is through this discipline, which has been around, in the case of classical archaeology for four centuries, and in the case of prehistory, for a little over a hundred years. As a consequence of that, we oppose this legislation, and feel that anything that encourages, through illegal sale abroad, a disturbance of the archaeological record anywhere, is detrimental. Thank you.

[Dr. Leone's submissions for the record follow:]

PREPARED STATEMENT OF MARK P. LEONE

ON BEHALF OF THE SOCIETY FOR AMERICAN ARCHAEOLOGY

Mr. Chairman and members of the Committee. The Society for American Archaeology is the leading association of professional and advocational archaeologists studying the Americas. We have approximately 7,000 members who are located in all states of the Union. We are a scholarly society and our concern over this bill is grounded in scholarship. Looting destroys our data base. Looting destroys opportunities for cultural parks and teaching exhibits in museums and schools. Looting destroys sites forever.

Mr. Chairman and members of the Committee, I wish that it was not necessary to testify before you today. The legislation you have before you was well intentioned. It has been introduced by people that archaeologists have known as friends for many years. Unfortunately, if enacted, S. 1523, the Cultural Repose Act of 1985 would weaken law enforcement against looting.

WHOSE PROBLEM DOES THIS BILL SEEK TO ADDRESS?

It is a well-established principle that legislation should not be enacted where there is no need for new law. Yet what is the need that this law addresses? We are told that under current law, the various anomolous state statutes of limitation encourage foreign governments to engage in civil litigation and to press suits against owners of items acquired in good faith.

Where are these law suits? The only example of a law suit which has been brought forth to date is the effort of the Romanian Government to recover an El Greco painting. If Congress in its wisdom feels the Romanians should not be allowed to test their ownership of this painting in the courts, then pass a bill saying only that. Why pass a bill that not only addresses the El Greco — or Western art in general -- but sweeps along with it the entire spectrum of archaeological and ethnological materials?

We are told that the Peruvian government has made a blanket claim of ownership to all pre-Columbia artifacts in that country. How is this harmful to Americans or morally reprehensible? We have been able to identify seven pre-Columbian artifact repatriation cases. Of these, only 4 involved Peruvian artifacts. In each of these cases, the lawsuit was brought by the US Customs Service, which seized the artifacts on import into the United States.

One of the best known of these cases to people in Washington is United States v. Bernstein, No. 82-0019 A (E.D., Va, Mar. 5, 1982). The defendant in this case, Daniel Bernstein, was a New York art dealer. At the time Congress was debating the Convention on Cultural Property Implementation Act, Bernstein arrived at Dullas Airport with a suitcase full of artifacts. The artifacts were siezed by Customs due to underdeclaration in quantity and value. Additional artifacts were later found in Bernstein's residence, bringing the total number of artifacts to over 700. Subject to criminal charges for trading in stolen property, Mr. Bernstein plea bargained for a misdemeanor and returned the artifacts. Prior to their return, the artifacts were displayed at the National Geographic Society here in Washington as part of a US-Peruvian effort to educate the public about the problem of looting.

To take just one more example, in United States v. Pre-Columbian Artifacts, No. 82-220, NCR (S. D. Fla., Mar. 24, 1982), the Customs Service detained two Peruvian pre-Columbian gold burial masks and vestiments worth approximately $50,000 and one Mayan vase from Guatemala worth about $25,000. The artifacts were being reintroduced into the U.S. after an effort to sell them in Australia. Leeman Moore, a Miami art dealer, had registered the artifacts with Customs prior to shipping them to Australia.

As the Court's record reflects, the case on the Peruvian artifacts turned on the fact that the artifacts were exported from Peru without evidence of knowledge, license or consent of the Peruvian government. Peru sought repatriation of the artifacts under their cultural patrimony laws. At the conclusion of the trial, but before Judge Norman Roettger could render a decision, Moore elected to release all claims of ownership and return the artifacts to Peru.

Where is the harm to Americans? Where is the morally reprehensible behavior by Peru? Where is the systematic abuse of state statutes of limitations which demands Congress enact S. 1523?

Sadly, the morally reprehensible behavior is on the part of our fellow citizens. Sophisticated Americans play a major role in looting as buyers of stolen artifacts. As the court cases demonstrate, some American dealers knowingly import stolen items. Others dealers, who we would all agree should know better, simply decide to rely on "blissful" ignorance of the legal or illegal export of the artifacts they purchase to protect them. If there is any harm in this situation, the harm is to the countries whose patrimony is raped. If there is morally reprehensible behavior in this situation, it is targeted towards each of us. We lose a part of our history forever when a site is wantonly destroyed by looters.

What we need are stronger anti-looting laws, not weaker laws. No-one denies that looting is a world tragedy. The real question is, "How can we ensure that the US no longer serves as a market for illegal antiquities?" For example, why not require sellers of artifacts to provide papers proving that the items were not stolen or illegally exported prior to every sale. Failure to provide accurate papers could be a criminal offense. Congress might also require all dealers to carry "malpractice" insurance just to further protect Americans against the occasional unscrupulous dealer. Congress might also require similar papers and insurance from anyone seeking to import antiquities into the United States. In short, it you want to legislate in the antiquities area, address the real problem - looting, not some non-problem like the statute of limitations.

WHAT WOULD THIS BILL DO?

What would S. 1523 do? Under section (a)(1) it would prevent recovery of any artifact held in the United States for five years prior to the date of enactment of this bill. In other words, Mr. Bernstein and others like him would no longer have to worry that the rightful owners could recover their ill gotten gain from the past.

Section (a)(2) prevents recovery of an artifact held for two years by a recognized museum or religious or secular monument or similar institution if for that period the item has been exhibited or otherwise made public via publication, cataloging, or otherwise. Who does this subsection protect? Surely a recognized museum should be viewed as a sophisticated purchaser of antiquities. Surely a sophisticated purchaser must be familiar with the problem of looting. As rational people, any sophisticated purchaser must be aware that it is only prudent to contact the government of the country of origin if there is any possibility the item is looted.

What does this subsection mean anyway? How much publication is required? What does "otherwise" mean? I am sure the Committee can appreciate that there are relatively few trained professionals in poor countries. After all, resources are rightly targeted towards feeding people, economic development, protecting the nation against insurgency, fighting drug traffic, and so forth. So there is not an army of people sitting around with nothing to do but read every publication and catalog of every "recognized museum or religious or secular monument or similar institution" in the United States. The tracking task is analogous to requiring each member of this Committee to personally read every bill and the accompanying floor statement for every piece of legislation introduced in either the House or Senate, just in case something important crops up. Of course, you will have to continue to perform all the other tasks you currently are performing without any additional resources or staff.

Section (a)(3) prevents recovery of items held by anyone for three years if the fact of possession was "public" through public exhibition or publication or through consultation by the holder with scholars or [undefined] experts or through published studies or otherwise. The problems with the last section are truly magnified here. The Society for American Archaeology, as noted, has approximately seven thousand members. Is each country in the world supposed to each year poll our members to ask if they might have seen something that might have been looted? And what of "experts" who are not in the SAA? And what does "otherwise" mean? To carry the analogy used before a little further, that would be analgous to each one of the Members of this Committee personally reading ever page of the Congressional Record each day it is printed.

Section (a)(4) prevents recovery of items held by anyone for a period of 10 years unless the holder acquired the item with actual knowledge that it was removed from the possession of the country in violation of the law of the country of origin. This subsection is the "ignorance is bliss" subsection. It encourages people to avoid asking how an item came into trade for fear they might have "actual knowledge." It removes the time-tested burden of caveat emptor, qua ignorare non debuit quod jus alienum emit [let a purchaser beware, who ought not to be ignorant of what they are when he buys the rights of another]. As any collector or dealer in antiquities cannot be unfamiliar with the problem of looting, this section sanctions the alternative principle: let others steal and be protected so long as you are careful to stay ignorant.

RELATION OF S. 1523 TO THE CONVENTION ON CULTURAL PROPERTY IMPLEMENTATION ACT, P.L. 97-446

P.L. 97-446 provides stand-by authority for the President to impose import restrictions on narrowly defined classes of artifacts. As the Society for American Archaeology stated at the time this law was being debated by Congress, it is a very weak law. Nonetheless, we vigorously supported its enactment on the grounds that any improvement in the laws discouraging looting was important.

Since that time, it has somehow become fashionable to point at this law and argue that we have addressed the looting problem. Of course we all know we have not done so. Looting continues.

Stronger laws discouraging Americans from directly or indirectly supporting the pillage of archaeological sites around the world are called for. Let me give only one example. Surely the resources which can be targeted towards preventing looting are greater in this country than in the Third World. What is the situation here? According to Secretary of the Interior Donald Hodel 80% to 90% of all prehistoric ruins in the Southwest show signs of vandalism or looting. So who needs help -- those fighting looting or those seeking to weaken existing laws against looting?

CONCLUSION

As I noted earlier, we have appreciated the support members of this Committee have provided archaeology in the past. We know that it is not your intention to send a message to the American people and our allies overseas that Congress is no longer concerned about looting. But that is what this bill does. If enacted, this bill would tell unscrupulous people to be a bit more careful and clever and they would be able to sell and hold looted antiquities more securely than in the past.

If there is a real problem in Texas over the Kimbell's El Greco, and if, in your judgement legislative relief is called for, then by all means provide it by passing a Kimbell El Greco Protection Act of 1985. But please consider carefully the broad scope with which this legislation has been drafted. Please remember that Chapter 101 of 28 USC would be titled Repose for Certain Items of Archaeological and Ethnological Material and Cultural Property rather than Repose for the Kimbell's El Greco.

There has been no avalanche of witnesses claiming that there antiquities were wrongfully repatriated due to the various anomolous state statutes of limitations. The only real problem for Congress to address in the international trade in antiquities is the problem of looting. If you want to pass legislation, then we urge you to pass legislation strengthening laws against looting and trafficking in looted artifacts. **This bill only weakens current law and we urge you to let it die here in the Subcommittee.**

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society for american archaeology
2000 P Street NW, Suite 305, Washington D.C., 20009

The Honorable Charles McC. Mathias, Jr.
Chairman, Senate Subcommittee on
Patents, Copyrights and Trademarks
SD-137 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Mathias,

The enclosed article from Business Week is particularly relevant in light of the recent hearings you chaired on the Cultural Property Repose Act (S.1523). The article points out that reputable dealers and auction houses guarantee their pieces with an unconditional money-back policy in order to protect the private collector from forgeries.

The Society's testimony suggested that rather than implement Repose to ensure legitimate owners protection from repatriation requests, dealers and importers should be required to guarantee that their pieces are not stolen through proper documentation and insurance. What this article demonstrates with regard to S.1523 is that our position places no undo restrain on reputable dealers.

The Society requests that this letter and the accompanying article be included in the hearing record for S.1523. Thank you.

Sincerely,

Audrey Porsche
Associate Director
Washington Office
Society for American Archaeology

Personal Business

JANUARY 20, 1986

ANCIENT ART AT PRICES THAT AREN'T OUT OF SIGHT

EDITED BY DONALD H. DUNN

When thieves took 140 works of pre-Columbian art from Mexico City's famed museum of anthropology on Christmas Eve, news stories pointed out that some "priceless" pieces were crafted from gold, jade, and turquoise. Such accounts could leave you with the impression that the entire genre is out of reach to all but museums, the superrich, or superthieves. It's true that prices have climbed in the past few years on almost anything dubbed Mayan or Aztec, and particularly on such newly popular items as jade heads of the broad-nosed people of Mexico's Olmec culture. "But it's one field where you can easily find excellent pieces that cost only a few hundred dollars," says David Joralemon, a New York expert who acts as curator for several private collectors.

In most cases, the value to collectors springs from the satisfaction inherent in owning artifacts of the advanced cultures that flourished in the New World 1,000 or more years before Christopher Columbus came ashore. Rarely does the price of a piece depend on the precious metal or gemstone in it. If you join the ranks of collectors of pre-Columbian art, you will learn early on that even an unadorned clay vase or carved stone figure can be worth thousands of dollars if it boasts good workmanship and design. Major pieces, on the other hand, sell for relatively little when compared with great works in other fields. Kenneth Bower, who runs a Manhattan gallery called Lands Beyond Ltd., recalls that a pre-Columbian masterpiece, one of only 40 or 50 known, recently fetched $175,000 at an auction. "Could you buy a top painting for that little?" he asks.

DON'T COUNT ON A SURE PROFIT

Legitimate dealers and advisers warn against starting a collection merely in the hope of realizing a profit on your investment. Since the mid-1970s, when Mexico, Peru, and other Latin American countries began to restrict exports of cultural and historical artifacts, some would-be sellers have argued that prices will climb steadily because fewer pieces will get into circulation. "But there is so much pre-Columbian art available both here and in Europe that the restrictions by themselves have had little effect," says Harmer Johnson, a New York City appraiser. Rather than count on prices moving up, adds Bower, you should buy a piece solely "because you fall in love with it." Do that, he points out, and "you will have the pleasure of owning it whether or not it grows in value. Any appreciation will be a bonus if you decide to sell."

Dealer Jerome M. Eisenberg, whose Royal-Athena Galleries in New York and Beverly Hills sell all kinds of ancient art, notes that Greek and Roman sculptures, vases, and jewelry items are more likely than pre-Columbian works to produce profits. But the sheer unfamiliarity of pre-Columbian pieces may intrigue you—as Daniel Wolf, a New York City photo dealer, discovered three years ago when he called on a client to sell a picture: "I saw this bowl on a shelf and simply hadn't seen anything like it before." Fascinated, he began to study the field and realized that "these weren't primitive cultures but ones on the same level as the Greeks, Romans, and Japanese." His collection now includes pieces from the cultures of the Mayas ("Their works reflect an expressive language, very active, sometimes crazy") and the Olmecs (their art has "serenity and purity").

GO TO AN AUCTION —AS A SPECTATOR

Becoming a collector automatically can confer something of an exclusive cachet. Joralemon estimates that "perhaps only 500 people in the country will regularly spend $1,000 for an object." And there are no well-established collectors' clubs or specialized periodicals to help you get a quick grasp of the field. So be prepared to spend some time and effort to learn that age isn't everything—one clay item made in 500 B.C. by a laborer who needed a jug can have little intrinsic value, while another shaped by an artisan commands a hefty price. Another reason to do some study before starting your collection: The chances are good—perhaps 2 to 1 or better—that you will encounter a piece that is a counterfeit or replica. One way to start investigating the field is to write the museum shop of the St. Louis Art Museum, 1 Fine Arts Drive, St. Louis, Mo. 63110. For $35 (plus shipping), it sells Lee Parsons' *Pre-Columbian Art*, with 500 illustrations of objects in the museum's extensive collection. For $10 each, dealer Eisenberg (153 E. 57th St., New York, N.Y. 10022) offers two informative books, *The Maya* and *Mexico*, by expert Michael D. Coe.

Before making your first purchase, try to attend a pre-Columbian auction or two. Sotheby's holds one each spring and fall in New York, and the next is scheduled for May. (A copy of its November, 1985, catalog for auction No. 5401 is $14 from Sotheby Parke Bernet Inc., 1334 York Ave., New York, N.Y. 10021.) You can determine what type of art fits your budget and which way the market is moving by comparing the actual selling prices with the "floor" prices listed for each piece in an auction catalog. Johnson, who works with Christie's as a consultant, says you will find truer values at a major auction—"one with fresh works from an estate or museum, rather than unsold pieces that dealers have had on display for months." And you will learn to evaluate works better if you concentrate on a particular culture or type of art, rather than buying haphazardly in the wide pre-Columbian field. ("For some reason," notes Johnson, "pieces with ducks and owls are more salable than chickens.")

SPOTTING FAKES, TESTING FOR AGE

At his gallery, Bower contends that, merely by putting a few drops of water on the clay, you can quickly learn to identify which of three long-gone cultures in Mexico produced a particular piece of pottery. And you might be able to spot authentic pieces by looking for distinctive marks produced by tree roots on objects that were buried for centuries. Before shelling out for an expensive work, you may want to order a $200 scientific test of its authenticity. At Daybreak Nuclear & Medical Systems Inc. in Guilford, Conn., physicist Victor Bortolot can determine the age of an object with a thermoluminescence test that measures the amount of radiation it has absorbed since it was made.

With fakery widespread, be sure to get a guarantee before buying anything dubbed pre-Columbian. Reputable dealers and auction houses have an unconditional money-back policy—in writing, with no time limit—that provides a refund if your purchase is revealed as something less than it was said to be.

PROTECTING THE HIDDEN VALUE IN YOUR HOME

If you are a longtime homeowner, the odds are good that you have increased the insurance coverage on your house to protect its appreciated value. But before renewing your policy, think about extra coverage that may be needed because you have steadily made improvements over the years.

For example, the wood paneling that you and your youngster installed in a den during a summer vacation might represent a small out-of-pocket cost. But if it's damaged by fire, the cost of new paneling and the labor that would have to be hired to put it up could come to several times what you spent. Or if you ordered custom-made draperies to match wall coverings in one or more rooms, the $10,000-per-room valuation that's standard for decoration in homeowner policies might not provide sufficient coverage.

Among other structural features that are frequently overlooked in appraisals of fine homes, according to an executive of the Chubb Group of Insurance Cos.: fireplaces, which may require extensive hand labor and costly materials to replace; wall-to-wall carpeting, exotic marble or parquet flooring, built-in lighting systems, and new heating and cooling units.

Senator MATHIAS. Thank you, Dr. Leone. I would, certainly, agree with the general principles that you have stated. Not only do we condemn art thefts, but, in your particular profession, we condemn the disturbance of an archaeological site which obscures the archaeological evidence, and that makes a double tragedy, because you do not learn what can be learned. You not only lose the object itself, the artifact, but you fail to read the archaeological record which is there. When a grave robber moves in and simply despoils a grave, he does much more than simply loot the grave. He destroys forever a record that otherwise would be legible to those who are trained to read it.

Having said that, how do we discourage the art thief?

Dr. LEONE. Let me, if you will, allow Dr. Speser to address that.

STATEMENT OF PHILIP SPESER

Dr. SPESER. Thank you very much. I do have a couple of pages here from a student paper that deals with the Convention on Cultural Properties Implementation Act. I would like to insert these pages in the record because the first four pages describe—the student who wrote it is an archaeologist although he is now in business administration—describe the sensations that an archaeologist has in discovering a looted site, and some of the problems. If there is no objection.

[The student paper referred to above follows:]

THE CONVENTION ON CULTURAL PROPERTIES IMPLEMENTATION ACT
PL 97-446

Harvey M. Shields
December 11, 1985
The Social and Legal Environment of Business
BAD 201

INTRODUCTION

As you and your guide walk through the jungle, you find yourself quite pleased with the success of the University expedition. In the last month you found three minor ceremonial centers and seven villages all from the Classic Period, 300 AD- 900AD. Your model for Classic Period Mayan settlement patterns proved itself to your satisfaction and you are anxious to begin the testing program that will lead to a major excavation next year.

Despite your thoughts having been elsewhere, something triggers that "automatic" site finding mechanism in your mind. You take more notice of the terrain, there are mounds where naturally there should be none. There are changes in the vegetation, its not as dense and the mix of species is different. You begin to concentrate on your work, you have found another site. The density of the mounds increases as you continue, large roughly rectangular piles of rubble appear every so often. You are approaching the center of what appears to have been a major settlement. Coming out to a clearing, your heart drops, what had been a flush of excitement and a feeling of great discovery has been turned into a frustrating, nauseating experience.

Before you lies a cratered field that resembles a war zone more than anything else. You are obviously not the first one to discover this site, but whoever did has been working it a long time. In the backdirt piles you see the usual broken pottery sherds and pieces of statuary. Many of them exhibit fresh breaks, unnecessary destruction from careless digging. They went for the "goodies" ignoring anything that appeared common or plain.

Further exploration of this area brings you to a scene that bothers you more than the rest. A large monolith lies in the grass on its side. It does not take you long to figure out that this had once been a Mayan stela. Stela are not only among the most beautifully carved rock art in the world, but they represent a portion of the written history of the people who once flourished in this part of Central America. The apron of rubble around what had been the front attests to the lack of sophistication of these particular looters. With a hammer and chisel they attempted to remove the entire front in one piece. It has been done on occasion, but the success rate is quite small. At this point you wish they had been a bit more like the big time professionals and brought a stone saw to cut the face off. You can tell that the larger fragments have been removed, even parts of great cultural art bring a fair price on the antiquities market.

This makes a total of five out of the eleven sites you have found that have been vandalized in a similar fashion. Fifteen years ago when you began your studies of Mayan civilization there was some looting, but it never seemed this extensive. Your major advisor at State University where you got your Ph.D. used to tell stories about the pristine discoveries he had made back in the early 1950's. They would find corn in the storage bins. Buildings still stood, inside would be an array of artifacts that looked as if the inhabitants had just left. No more! Looters disturbed every site in some fashion, but now sites with major devastation made a larger and larger percentage.

Your guide also is concerned, but his feelings are mixed. He and his father made make handsome livings helping foreign archaeologists in their country. They enjoy helping them; besides the money, they feel that they are helping to preserve the past, when their Indian ancestors possessed a civilization that rivals the Greeks or Egyptians. They are proud of that heritage. They are also understanding of the fact that many of their fellow villagers make a good part of their yearly income by looting these archeological sites and selling the artifacts to the markets in the big cities. The economy is very poor. Who is to say what is right? People have to live and besides what good do these beautiful art objects do anyone in the ground. Better they go to someone who will appreciate them. On the other hand, because of his work with the archaeologists, he realizes that the information about how the old ones lived also lies with the pieces. The knowledge is not just in the piece, but where it was found and what was found with it. This is a problem from his point of view with no easy answer.

Shots ring out bringing both you and your guide to the realization that your own existence is now of the utmost importance. The bullets come close enough to let you know you should not come back, but not close enough to indicate that "they" are trying to kill you. You are quite lucky. Other accounts of similar situations have reported archaeologists being killed. The antiquities market is second only to the narcotics trade and has many of the same overtones (Subcommittee on Trade 1976).

Sound a little unbelievable? A little like Indiana Jones and the Raiders of the Lost Ark? This fictional introduction presents a problem that is all to real, the incidents and descriptions are based on actual accounts (Gutchen 1983; Sheets 1973; Subcommittee on Trade 1976). The pillaging and looting of archeological sites for artifacts for sale to the antiquities market is a world wide problem. Not only have sites been destroyed to feed the market, but museums have been robbed of priceless objects including bronze and gold artifacts from the tomb of the legendary King Midas in Turkey, early bronze age pots from Thailand, and bronze figures and marble reliefs from Herculaneum and Pompeii in Italy (Subcommittee 1976).

The destruction of an archeological site is tantamount to destroying an archive. The information lost is incredible. Archaeologists, though, obtain their information from reading the artifacts in the ground instead of words on a page. But, as with words on the page, the order and position of the artifacts provide much of the meaning. With out its context an artifact alone has about as much meaning as a word in a dictionary. Yes, the individual word has meaning, but not until it is strung together with other words does communication occur. Thus, an artifact in its archeological context provides information about and, yes, communication from that culture under study. In its context the full measure of meaning is transferred, to our time, not about just the artifact but about the culture it represents. Removing an artifact from its context destroys much of the message a past culture can send us.

Dr. SPESER. To move to the specific question, our problem, quite frankly, Senator, is: We think that you can do things to protect the legal trade, and at the same time discourage looting. To be quite specific, we do have some problems with the idea of the agency solution that has been suggested, and the problem is very simple.

If you request that all the material be sent some place and be registered there, it is very hard for us to see, in a period of Gramm-Rudman, where you are going to get the money to start a new agency to support this kind of thing.

On the other hand, what we would suggest is that you require all sellers of artifacts to provide papers proving that the items are not stolen, or illegally exported prior to sale.

That you make failure to provide adequate papers a criminal offense, that will ensure that the cost/benefit ratio shifts.

That Congress also require all dealers and sellers of artifacts to carry a malpractice insurance. Thus, you would protect American citizens against unscrupulous dealers who are selling looted artifacts.

And that, further, you require similar papers and insurance from anyone seeking to import antiquities into the United States.

If I could make just one other point, sir. It is, from our perspective, vitally important, that people recognize that there is a great difference between art and artifacts.

If we take the Mexico City theft, as just an example, those are artifacts that have passed over into art, in a sense, and from an archaeological standpoint—leaving public education out of it for the moment—are relatively unimportant. They have been studied. We know about them.

These artifacts cannot even be, our Mexican art objects, cannot be recovered, even though every newspaper article I have seen suggests that they will be brought into the United States, hidden for 20 years, and then surface, or something like that.

The problem that we see is that there is a humongous trade in looting, and what is being looted are artifacts that we do not know about.

That is the character of looting. You are taking things out of the ground, nobody knows what they are, and so you have to kind of guess where they came from, and we have to kind of guess what somebody might have, from the evidence that is left in the looted site.

And to require, as the gentleman over here indicated, people in Third World countries to try and track every possible description, or explanation, or the phrase, otherwise, in the legislation, is very similar to requiring every member of your subcommittee to read all of the Congressional Record every day, and still do something productive, in terms of meeting the other normal duties that you do.

So, we would put the burden, quite frankly, where it belongs: on the people who want to sell.

It is a sophisticated population we are talking about. Buying legitimate antiquities is an expensive proposition, and there is no reason why you cannot expect sophisticated purchasers to be sure that they are buying legal items.

Senator MATHIAS. Yes.

Mr. JONES. May I comment about the provision or the suggestion that authentic bills of sale accompany each piece of art.

There is the well-known story of a collector in this country being offered a fake work of art from Switzerland for $90,000, and that same piece with an authentication for $120,000.

Authentications and fake bills of sale are a regular part of the traffic in the stolen art trade.

Dr. SPESER. We recognize that fact. That is why we also add the provision on the malpractice insurance, so that if somebody was ripped off, basically, they could at least be financially put right.

Senator MATHIAS. Of course, I am as unhappy about this as you. I do not see how that is going to deter a grave robber in Iran, or a grave robber in India. They are so far removed from the market. There are a number of steps before they get to the point that Mr. Jones describes, that you are looking for some kind of certificate of title, some kind of certificate of authenticity.

And I do not see how the passage of this bill is going to materially affect, for the worse, that situation. It may not materially affect it much for the better, either, I am bound to say. An illiterate grave robber in Iran who is opening up tombs that are 2,000 to 3,000 years old may not be deterred by whatever the U.S. Congress does, much as the Members of the U.S. Congress may be sorry to hear that.

Let me ask Mr. Jones a question about another suggestion of his, and that is that we look at the statute enacted in California.

Now, as I understand the California model, the statute does not start running after the lapse of a period of time, nor after some notorious act, but only after a demand and refusal. That demand and refusal could occur at any time.

In the case of the Elgin Marbles, the Greek Government could make the demand, and the British Government could make the refusal, and it would start today. So that model does not really provide much repose. It is a rather restless repose, because you never know when you have got title under those circumstances. That might give the ultimate benefit to the person whose work was stolen. It does not do much, however, for society at large, and for museums who are trying to legitimately present an educational and intellectual service to society.

Mr. JONES. I am not an authority on the Elgin Marbles situation. I do understand that it is the British Government's position, and the position of a great number of other governments whose citizens import art, that when there is a legal bill of sale from that country, as there was in the case of the Elgin Marbles, that the country has no recourse.

Senator MATHIAS. I was not trying to rehash the Elgin case, but merely to point out that under the California statute—and it does not matter how much time goes by—that the demand and refusal process can happen at any time. You never really have a period in which you can say, "I have bought this and it legitimately belongs to the Smithsonian," or, "It legitimately belongs to the Metropolitan Museum," or whatever. Until the demand, and refusal, is made, the possibility that it will be made constantly exists.

Mr. JONES. I grant that that is correct, and I think in looking at it you have to weigh that against the number of nuisance suits which have occurred against museums, and that on balance, it has been a very small problem.

Dr. SPESER. There is the confusion, sir, that if you buy a car, you walk into the car dealer and you say, "Show me some papers that say that you can really sell me this car," and, if you buy an artifact, or a famous work of art, for that matter, it is kind of hard for us to understand, in just a kind of commonsense approach, why somebody does not say, "Show me the papers that prove that you can sell it, and let me call up—if you say it is a Guatemalan artifact—let me call up the Government of Guatemala and make sure they have no problem, before I buy it."

Clearly, from every witness who has been before you today, it is clear that people are aware that there is a problem with looting and international art theft.

Senator MATHIAS. Of course, as Mr. Jones suggests, that is done today. Anybody planning to buy a serious work of art, or a serious archaeological object, would make some inquiry as to its provenance. They would inquire where it had been and who had owned it over the years. In some cases, the pedigree of these things is as distinguished as the pedigree of a race horse. Who owned it in what period of time, and for how long, and under what circumstances: all of these are factors in the art world today.

Dr. SPESER. I guess our confusion is that if that is the case, and, speaking only for archaeology, we cannot really speak to the art side of it of course—since nobody has come forth and pointed out an overwhelming problem with artifacts, and the problems there, we are kind of confused why this bill, which may legitimately address the Kimbell problem—I just do not know enough about that—is entitled "Repose for Archaeological and Ethnological Items." We sort of are getting swept along, where there is no problem.

Senator MATHIAS. Let me ask each of you: Are there any changes that you would like to see in this bill, that would make it more desirable? Increase the time limits? We have 2-year, 5-year, 10-year time limits. Should they be longer? Should they be different?

Mr. JONES. I am not so much concerned about the time limits, as I am about the different ways which museums and collectors can exercise what I understand is their so-called prescriptive rights.

We feel that an exhibition in a museum, or a listing in a exhibition catalog, or, least of all, in a card catalog, is in no sense sufficient, is sufficient proof that this piece is owned by a particular museum or collector.

One other point in this regard—and I did not mention this—is that private collectors also have the option of showing this work of art to an expert.

We have worked a great deal with art experts, and we do all the time when we have works authenticated. We have found that, by and large, academics are loathe to come forward and get involved in litigation, let alone a suit for personal damages.

In terms of positive recommendations, yes, we have suggested a central registry, and we have suggested that there may be merits in the California legislation.

Dr. SPESER. We would make three suggestions. One, we would exempt archaeology, up front. Two, we would urge you to look, because we are confused at this point, exactly what the word "otherwise" in making public means, for there is vagueness there in terms of when something is public. The California statute, from what I understand about, from the conversation today, seems like a reasonable way to go there.

Third, we would point out the problems in section (a)(4), which deal with recovery prohibited after 10 years unless actual knowledge that it is stolen. That we see as a kind of "ignorance as bliss" clause, which discourages people from finding out the origins, rather than encourages them to find out about the origins, and we think that should be struck altogether. And basically, from our standpoint, we would like to see the law left the way it is.

Senator MATHIAS. So you would exempt archaeology. Where does archaeology stop and art begin?

Dr. SPESER. Well, I guess if you wanted to——

Senator MATHIAS. At the British exhibit that is now, currently at the National Gallery, there is a head by Praxiteles, that presumably was recovered from some archaeological site.

Is that art, or is that archaeology?

Dr. SPESER. I will defer to Dr. Leone, but my guess would be, if you said something like 20th century painting, we are probably all going to be in agreement that that is a safe—or 20th century fine art—that would be a safe line, and that would take in the El Greco problem, quite frankly, or the Dürer problem. Again, there has been no set of witnesses who have come forward, screaming about the problems of their artifacts being repatriated against their wills.

There has been some concern, and if, downstream, the legitimate market does undergo major pressures, or something, then we may have to revise our position. We just do not know.

We certainly are not trying to stop the legitimate market. Our concern is that anything that sends a signal that says it is going to be easier to hold looted artifacts will keep people in the business of selling looted artifacts, and thus, ultimately, generate a demand for those people in Iran who are looting the tombs.

Senator MATHIAS. Governments are not immutable. Governments change. We come back to the Elgin Marbles case because it is so well known. Everybody knows about it. The Government of Greece, at the time of the Elgin Marbles transaction, was located in Constantinople. The government changed. It is now located in Athens.

Should a transaction, legitimate at the time, be made illegitimate by the fact that the government has changed? Is that a condition which we ought to anticipate, and provide some protection for collectors and museums?

Mr. JONES. I feel that trying to anticipate the precise manner a government might change, or the character of a suit it might bring forth is so indeterminable that it would be extremely difficult to do so.

Senator MATHIAS. But it has happened?

Mr. JONES. Yes.

Senator MATHIAS. I have one final question to ask of each of you. The fact that we have a kind of patchwork under current law—widely differing statutes of limitation in the various States—creates some uncertainty as to whether or not you do own a particular piece of art at a given time, depending on what State you are in.

Now, I assume it does not matter, from the point of view of your objections, how long it is: 2 years in one State, three years in another State, 10 years in another State. That is just the existing condition of the law.

Would it be desirable, from the point of view of the concerns that we all share, discouraging looting of archaeological sites, discouraging art theft—would it be desirable to have some uniformity, across the United States, whether you would adopt the longest period or the shortest period? Is uniformity itself a desirable goal?

Dr. SPESER. From our perspective—and again, we appreciate the fact that there is a real problem that you are trying to address, or a potential problem, and it is not a question of the intention here. But again, since we do not see where anybody is being harmed today, we do not see a need for uniformity. The key problem that we see is that you have got very poor countries in the Third World that do not have a lot of resources, and, unless there is something like this kind of a demand-refusal situation, in which case the time does not make any difference, the time is irrelevant. In year 1 you say you have got to file—once you find out you have got to bring a suit—in 2 years, or 5 years, whatever seems fair in that range.

It is hard to say what a precise statute of limitations should be, and hence, it is kind of hard for us to say, well, it should be 5 years rather than 2 years, and thus, the divergence does not seem to be the main problem.

The main problem is, how do you find out that somebody is holding a looted artifact, so that somebody can go and recover it, if that is in fact the legitimate thing to do, or, if they are holding a legal artifact, so they do not have to worry about somebody illegitimately trying to recover it.

Senator MATHIAS. It seems to me that one of the guides in determining how long is long enough would be some of the questions Mr. Jones raised.

In the present state-of-the-art market, and the art world, how long does it take for the word to get around? A foreign government, even a ministry of culture which had specific jurisdiction, would not necessarily be able to run all the indices all over the world on a daily basis, so you know it is going to take some time.

In human affairs, human intervention is important. Experts hear about things; experts, over a period of months may get together at a convention or a meeting and exchange information. All of these things do take time, and whether it is 3 years, 5 years, 10 years, is one of those questions of judgment that ought to be made.

Obviously, those were not the considerations that applied in a common-law State like Maryland, where we simply adopted the common-law rule from Britain. That body of law really did not anticipate art thefts, or the art market as it exists today. We are dealing with a phenomenon of our own time, and not something that the common law really was developed to address. That is the reason that we are wrestling with this problem today.

It is a new problem. It is a problem that results from the kind of global economy in which we now live, and for which there is no precise precedent in Anglo-Saxon law. I regret that Mr. Keeney did not stay around to hear that final summation of the problem. We appreciate very much your being here. Let me say to you, and to

Dr. Burke, Dr. Marzio, Mr. Maurer, and others who have testified today, that if you reflect upon this problem and have further thoughts, I am going to keep the record open for 30 days. You may want to add to what you have already said for the record. If others who have some notice of these hearings, and follow what was said here, also feel that they would like to make some contribution, we will entertain statements for the record.

It is a difficult question. Given the enormous amounts of money that are now being paid for art objects, the motivations for illegal traffic are very great, and one of the ways to curb illegal traffic, in both art objects and archaeological objects, is to protect the legal trade. Define what is the legal trade and protect it, and make the pale very distinct, the pale between what is illegal and what is legal.

And as long as the line between legal and illegal is blurred or vague, then there are going to be more people who will take the chance on looting graves, despoiling archaeological sites and stealing art. With the indistinct and vague state of the law, they think they can get away with something.

On those final words, we will close this hearing. Thank you all for being here, and the committee will stand in recess, subject to the call of the Chair.

[Whereupon, at 11:25 a.m., the committee was recessed, subject to the call of the Chair.]

APPENDIX

Testimony Submitted by Paul N. Perrot

Director, Virginia Museum of Fine Arts
Richmond, Virginia

Mr. Chairman, I deeply regret my inability to present, in person, my comments on S.1523, the Cultural Property Repose Act. I regret this for two reasons: the high respect that I have for you personally and the pleasure that it would have been for me to see you again, and my conviction that this legislation, in its present form, is both unneeded and unwise. It is unneeded because no evidence has been presented, at least that I am aware of, to suggest that foreign nations have been making unreasonable claims for objects held either by private or public collections in the United States. Those instances, that have been reported in the press, do not, in my view, constitute a legitimate base to create new legislation. These instances have been both infrequent and non-threatening and of a type that could be resolved through available legal channels and, for at least one reported instance, it would appear that the item being claimed was indeed stolen from a foreign public institution in peace time, and hence it would not seem appropriate to introduce legislation to cover such an instance.

While much has been said, by some, concerning the urgency of establishing safeguards, no documentation has yet been introduced to suggest such a need. Even assuming the worst case, that such protection would be desirable, the methods proposed are, in my view, not only ill-advised but counter-productive to our national image. The wording of the bill is ambiguous and would no doubt encourage illicit acquisitions. The terminology describing "exhibition" or "publication" is vague, and subject to a variety of different interpretations. Would an object, exhibited in an obscure, little used, but public, corridor be considered on exhibit? If an object were published in a little known archaeological journal, with restricted circulation, would it be considered to have been published? How can a claimant country demonstrate that a buyer had knowledge that an object had been removed in violation of that country's laws?

In regard to a five-year period: does it really mean that it is considered legitimate for an individual or institution, to retain an object illicitly acquired, either by theft or otherwise, and absolve that institution or individual, automatically, at the end of five years? In short, what this legislation unwittingly seems to encourage is subterfuge by practically stating that any item illegally imported and held in hiding for five years is above any claim. I cannot imagine this to be the intention of the drafters for, clearly, it is totally contrary to the basic principles of fairness on which our country stands and is opposed to every Code of Ethics or professional practice statement, made on behalf of the museum profession, nationally and internationally, over the last few decades.

My opposition to the bill does not mean that I would be averse to legislation that would define clearly what is meant by publication, what is meant by exhibition, and that would give a sufficiently long period of time for any potentially wronged party to at least have a chance of knowing that they had been wronged before "repose" went into effect.

In conclusion, Mr. Chairman, I find that: 1) the need for this legislation has not been demonstrated, and 2) that the proposed legislation is far too vague on the one hand and far too lax on the other. It encourages, unwittingly no doubt, concealment, subterfuge, and disregard of the laws of foreign countries and is contrary to basic principles of ethics which every museum professional should uphold.

In the Unesco Convention of 1970 and in its implementation legislation then are safeguards in addition to those which are inherent in our constitution. These safeguards, I believe, protect our institutions from unreasonable claims.

In regard to objects that have been stolen: I believe, that claimants should have all the rights that currently exist to pursue redress without any additional impediment.

Again, let me thank you for giving me the opportunity to express my views today.

STATEMENT OF THE AMERICAN ASSOCIATION OF MUSEUMS

MARCH 4, 1986

Thank you for the opportunity to comment on S.1523, a bill to provide for "Repose for Certain Items of Archeological and Ethnological Material and Cultural Property." The American Association of Museums (AAM) has been actively involved in promoting policies to preserve cultural property and its documentation and to prevent illicit traffic in such cultural property. In 1973 the association jointly sponsored a meeting of seven organizations (listed in Appendix "A") to discuss museum acquisition policies and the international traffic in cultural property. The council of the AAM, its governing body, subsequently endorsed the recommendation of that group in the same year. The resolution reads, in part:

> (The AAM) cooperate(s) fully with foreign countries in their endeavors to preserve cultural property and its documentation and to prevent illicit traffic in cultural property. (The AAM) believe(s) that museums can henceforth best implement such cooperation by refusing to acquire through purchase, gift or bequest cultural property exported in violation of the laws obtaining in the countries of origin.

A full copy of the text is attached as Appendix "A".

Further, in 1978 the membership of the association at its annual meeting unanimously endorsed the report of the AAM Committee on Ethics (published as Museum Ethics). The pertinent section of Museum Ethics reads:

> Illicit trade in objects encourages the destruction of sites, the violation of national exportation laws, and contravention of the spirit of national patrimony. Museums must acknowledge the relationship between the marketplace and the initial and often destructive taking of an object for the commercial market. They must not support that illicit market. Each museum must develop a method for considering objects of this status for acquisition that will allow it to acquire or accept an object only when it can determine with reasonable certainty that it has not been immediately derived from this illicit trade and that its acquisition does not contribute to the continuation of that trade.

The issue of repose as it relates to archeological and ethnological material and cultural property is extremely complicated and poses complex moral and philosophical issues that are not specifically addressed by the association's positions as outlined above. It requires a very careful balancing between the legitimate interests of the country of origin and the current holder of such property.

The AAM believes that the provisions of S.1523 do not address the broad range of concerns that must be taken into account on this issue and, consequently, oppose its adoption. While we oppose passage of S.1523 in its present form, that view should not necessarily be interpreted as opposition to some form of repose.

At its meeting on January 31, 1986 the Council of the American Association of Museums unanimously adopted the recommendations of its Executive Committee endorsing the development of legislation for the repose of archeological and ethnological material and cultural property based upon the standards contained in sections 308 and 312 of the Convention on Cultural Property Implementation Act (P.L. 97-446). Attached as "Appendix 'B'". Concurrently the association will work to issue guidelines for museums concerning the transfer of cultural property based upon the highest ethical standards of all branches of the museum community.

The repose provisions contained in P.L. 97-446 resulted from discussions and negotiations between and among the broad variety of groups interested in this issue and included not only museums, but archeologists, dealers, collectors and various federal agencies. While various groups concerned about this issue urged more or less stringent criteria, the result emerged as an adequate balancing of views.

The association has initiated a process of consultation within the museum community and among other interested groups to develop specific recommendations for the committee's consideration.

APPENDIX "A"

On April 17, 1973, official representatives of seven American professional organizations met in Washington, DC to discuss museum acquisition policies and the international traffic in cultural property. The meeting was jointly sponsored by the United States National Committee of the International Council of Museums (US-ICOM) and the American Association of Museums (AAM). After discussing the actions taken to date by a number of individual groups, the representatives drafted the following joint policy statement to present to the membership of each organization for adoption:

> "Recognizing that Museums, whatever be their specialty, have a communality of interests and concerns, which comes into particularly sharp focus in matters of ethics and professional behavior, that they are the custodian of man's material heritage and of that part of his natural heritage which he has collected for study and transmission to future generations; and further recognizing that, in their search for collections, Museums have in the past either engaged in, or tolerated on the part of others, activities often detrimental to the integrity of their mission, the representatives of the organizations listed below recommend that the following statement of basic principles be adopted by the governing bodies of these organizations to guide Museums, their boards and their staffs in the acquisition of cultural properties.
>
> "Be it resolved that these organizations listed below cooperate fully with foreign countries in their endeavors to preserve cultural property and its documentation and to prevent illicit traffic in such cultural property.
>
> "These organizations believe that Museums can henceforth best implement such cooperation by refusing to acquire through purchase, gift, or bequest cultural property exported in violation of the laws obtaining in the countries of origin.
>
> "They further believe that the governing bodies, directors and curators of Museums should, in determining the propriety of acquiring cultural property, support and be guided by the policies of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property and the implementing provisions adopted by the signatory states.
>
> "It is recommended that all nations establish effective export laws and develop proper controls over exports so that illicit traffic may be stopped at its sources. However, wherever possible, within the limits of national law, consideration should be given to legitimate and honorable means for the acquisition of cultural property. It is hoped that nations will release for acquisition, long term loan, or exchange, cultural property of significance for the advancement of knowledge and for the benefit of all peoples.
>
> "In order to augment and clarify further the intent of this resolution and determine methods of accomplishing its aims, the governing body of a museum should promulgate an appropriate acquisition policy statement commensurate with its by-laws and operational procedures, taking into consideration the International Council of Museums' recommendations on Ethics of Acquisition."

Organization Representatives:

Charles E. Buckley, President, American Association of Museums

Paul N. Perrot, Chairman, U.S. Committee, International Council of Museums

Joshua C. Taylor, College Art Association of America

Sherman E. Lee, Association of Art Museum Directors

Rodney Young, President, Archeological Institute of America

Charles R. McGimsey, American Anthropological Association and Society for American Archeology

APPENDIX "B"

19 USC 2607

SEC. 308. STOLEN CULTURAL PROPERTY.

No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of this title, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the United States.

19 USC 2611

SEC. 312. CERTAIN MATERIAL AND ARTICLES EXEMPT FROM TITLE.

The provisions of this title shall not apply to—

(1) any archaeological or ethnological material or any article of cultural property which is imported into the United States for temporary exhibition or display if such material or article is immune from seizure under judicial process pursuant to the Act entitled "An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition, and for other purposes", approved October 19, 1965 (22 U.S.C. 2459); or

(2) any designated archaeological or ethnological material or any article of cultural property imported into the United States if such material or article—

(A) has been held in the United States for a period of not less than three consecutive years by a recognized museum or religious or secular monument or similar institution, and was purchased by that institution for value, in good faith, and without notice that such material or article was imported in violation of this title, but only if—

(i) the acquisition of such material or article has been reported in a publication of such institution, any regularly published newspaper or periodical with a circulation of at least fifty thousand, or a periodical or exhibition catalog which is concerned with the type of article or materials sought to be exempted from this title,

(ii) such material or article has been exhibited to the public for a period or periods aggregating at least one year during such three-year period, or

(iii) such article or material has been cataloged and the catalog material made available upon request to the public for at least two years during such three-year period;

(B) if subparagraph (A) does not apply, has been within the United States for a period of not less than ten consecutive years and has been exhibited for not less than five years during such period in a recognized museum or religious or secular monument or similar institution in the Unites States open to the public; or

(C) if subparagraphs (A) and (B) do not apply, has been within the United States for a period of not less than ten consecutive years and the State Party concerned has received or should have received during such period fair notice (through such adequate and accessible publication, or other means, as the Secretary shall by regulation prescribe) of its location within the United States; and

(D) if none of the preceding subparagraphs apply, has been within the United States for a period of not less than twenty consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON DC 20510

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RALPH OMAN CHIEF COUNSEL
STEVEN J METALITZ STAFF DIRECTOR

February 5, 1986

The Honorable William H. Webster
Director
Federal Bureau of Investigation
J. Edgar Hoover Building
Washington, D.C. 20535

Dear Judge:

On January 9, 1986, the Senate Judiciary Committee's Subcommittee on Patents, Copyrights and Trademarks held a hearing on S. 1523, the Cultural Property Repose Act. I would appreciate it if you would address certain issues that have arisen during the subcommittee's consideration of this legislation.

S. 1523 establishes a statute of limitations for suits by foreign governments seeking to recover cultural property in this country. The bill contains a sliding scale of repose: two years for museums which publicize their acquisition; five years for individuals, if for three of those years the acquisition of an object is made public; and 10 years for all others unless the foreign government could prove the holder knew the object was stolen.

Some of the witnesses at the hearing expressed concern that the bill's definition of "public holding" -- a public exhibition or publication -- would not provide adequate or fair notice to governments seeking to locate an object. They proposed the establishment of a central clearinghouse where purchasers could register cultural acquisitions as proof of their good faith. Thus, governments would have constructive notice of the whereabouts of an art object and could not object if the statute of limitation began to run from the time of registry.

The FBI already maintains, through the National Crime Information Center, an extensive computerized file on stolen property. It has been suggested that the experience gained in the creation and maintenance of this file could be useful in the establishment of a central clearinghouse for information on the possession of cultural property.

In exploring the feasibility of such a central registry, it would be helpful to the subcommittee if you would share your thoughts on the following questions:

- What resources currently are available through the NCIC to collectors and museums seeking to determine whether an object they want to purchase is stolen?

- What resources are available to foreign governments, or indeed anyone else, seeking to locate stolen art or artifacts in this country?

- To what extent do the "hot files" of the National Crime Information Center include data on stolen art or artifacts?

- To what extent are these files accessible to collectors, musuems or foreign governments, either directly or through law enforcement agencies?

- What changes would be required if the NCIC were to be used as the central clearinghouse proposed by witnesses at the subcommittee hearing?

Thank you in advance for your assistance in this matter. If you have any questions, please call Steve Metalitz or Sharon Donovan of the subcommittee staff at 224-5617.

With best wishes,

Sincerely,

Charles McC. Mathias, Jr.
United States Senator

CM:sd

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

April 21, 1986

Honorable Charles McC. Mathias, Jr.
Chairman
Subcommittee on Patents, Copyrights,
and Trademarks
United States Senate
Washington, DC 20510

Dear Senator Mathias:

I am responding to your letter of February 5, 1986, in order to provide general information regarding records maintained on stolen artifacts.

The National Crime Information Center (NCIC) does maintain a computerized Article File designed to receive and store records describing stolen property. Entries may be made on stolen property items by local, state, and Federal agencies based on theft reports filed in the agency having primary jurisdiction over the place of actual theft. Individual collectors or museum personnel may contact their local police agency to determine if a particular artifact has been reported stolen. Direct access to NCIC is restricted to law enforcement agencies authorized to make entries and inquiries based upon a unique manufacturer-assigned serial number and/or an owner-applied number. NCIC procedures and policies require that law enforcement agencies enter records based on documented theft reports and be available 24 hours daily to respond to any possible matches to inquiries made by other agencies. Foreign governments may contact INTERPOL to request checks of NCIC for records that may have been entered within the United States or Canada.

The NCIC System was designed to be limited to law enforcement usage with computerized matches being made on a unique serial number or owner-applied number on property reported stolen. It was not designed to serve as a central clearinghouse with open access to anyone outside law enforcement to preclude misuse of information stored in NCIC. Any changes to current policy would have to be presented to law enforcement officials for their consideration, noting NCIC is operated on a shared management basis with state level executives providing input to the NCIC Advisory Policy Board and at Regional Working Group meetings. Enclosed is a booklet dated June, 1984, entitled "The Investigative Tool" which contains further details on the use of NCIC.

In 1979, the FBI Laboratory developed a National Stolen Art File which contains information on stolen and recovered fine art objects. The computer file is rather unique inasmuch as it uses a laser disk system to record visual images of the objects. The Laboratory Division receives requests to search and record information from various contributors on a regular basis.

The FBI's National Stolen Art File is available for use by all duly constituted law enforcement agencies within the United States in criminal investigations involving stolen art objects. In addition, the FBI works with INTERPOL's Washington Bureau in matters concerning stolen art objects involving foreign governments. The file is not intended for use as a "national registry" for private collectors and museums. Enclosed for your information is a copy of an article about the Laboratory's National Stolen Art File which appeared in the March, 1983, issue of the FBI Law Enforcement Bulletin.

If you or members of your subcommittee staff have any questions concerning our efforts to assist investigative agencies in cases involving stolen art, please do not hesitate to contact Special Agent Bruce D. Ash, Office of Congressional and Public Affairs, telephone number (202) 324-4515.

Sincerely yours,

Bill

William H. Webster
Director

Enclosures (2)

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

May 16, 1986

To: Senate Judiciary Committee
Patents, Copyrights and Trademarks Subcommittee
Atten: Sharon Donovan

From: American Law division

Subject: State Statutes of Limitation for the Detention of Personal Property.

This is in response to your request for a list of state statutes of limitation applicable to art and artifacts. The enclosed list is limited to those statutes applicable to the detaining, taking, injuring or conversion of personal property. Whenever a case that is particularly on point was annotated, it is noted after the pertinent section. The reader is cautioned that they may want to refer to the statutes themselves for a full understanding of the implications, and to case law for interpretation and application to specific situations.

Toni D. Drake

Toni D. Drake
Legislative Research Assistant

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

STATE STATUTES OF LIMITATION FOR THE DETENTION OF PERSONAL PROPERTY

Toni D. Drake
Legislative Research Assistant
American Law Division
May 15, 1986

STATE STATUTES OF LIMITATION FOR THE DETENTION OF PERSONAL PROPERTY

State	Code Section	Years	Language
Alabama	Alabama Code Ann. §6-2-34(3)	6	Detention or conversion of personal property.
Alaska	Alaska Stat. Ann. §09.10.050	6	Taking, detaining, or injuring personal property, including action for specific recovery.
Arizona	Ariz. Rev. Stat. Ann. (1985 Pocket Part) §12-542(5)	2	Detaining the personal property of another and converting such property to one's own use.
Arkansas	Ark. Stat. Ann. §37-206(6)	3	All actions for taking of any goods or chattels.
California	Code of Civ. Proc. (1986 Supp.) §338(3)	3	Taking, detaining, or injuring goods or chattels, including actions for specific recovery thereof;... cause of action in theft of any art or artifact not deemed to have accrued until discovery of whereabouts of the art or artifact by the aggrieved party...
Colorado	Colo. Rev. Stat. §13-80-110(f)	6	Replevin, and all other actions for taking, detaining, or injuring goods or chattels.
Connecticut	Conn. Gen. Stat. Ann. §52-577	3	Action founded upon a tort.
Delaware	Delaware Code Ann. Title 10, §8106	3	To regain possession of personal chattels; to recover damages for the detention of personal chattels.

State	Code Section	Years	Language
District of Columbia	D.C. Code §12-301(2)	3	Recovery of personal property or damages for its unlawful detention.
Florida	Fla. Stat. Ann. §95.11(3)(h)	4	Taking, detaining, or injuring personal property.
	Fla. Stat. Ann. §95.11(3)(i)	4	To recover specific personal property.
Georgia	Ga. Code Ann., 1982 Ed. §9-332	4	Recovery of personal property or for damages for the conversion or destruction of same.
Hawaii	Hawaii Rev. Stat, 1976 Replacement, §657-1(3)	6	Actions for taking or detaining any goods or chattels.
Idaho	Idaho Code Ann. §5-218(3)	3	Taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.
Illinois	Smith-Hurd Ill. Stat. Ann. Title 110, Sec. 13-205	5	Recover the possession of personal property or damages for the detention or conversion thereof.
Indiana	Burns Indiana Stat. Ann. (1985 Supp.) §34-1-2-2(1)	2	Injuries to personal property.
Iowa	Iowa Code Ann. §614.1(5)	5	Injuries to property.
Kansas	Kansas Stat. Ann., 1976 Ed. §60-513	2	Taking, detaining, or injuring personal property, including actions for the specific recovery thereof.
Kentucky	Kentucky Rev. Stat. Ann. §413.120(6)	5	Taking, detaining, or injuring personal property, including an action for specific recovery.

State	Code Section	Years	Language
Louisiana	West's La. Stat. Ann., Civ. Code (1985 Supp). Art. 3490	3	One who has possessed a movable as owner... without interruption for three years, acquires ownership by prescription. The prescription period applicable for the recovery of a movable which has been stolen, even in the hands of an innocent third purchaser, is three years. *Aegis Ins. Co.* v. *Delta Fire and Casualty Co.*, 99 So. 2d. 767 (1958).
Maine	Maine Rev. Stat. Ann. Title 14, §752	6	All civil actions shall be commenced within six years.
Maryland	Ann. Code of Md. CJ §5-101	3	Civil action at law shall be filed within three years from the date it accrues. Adverse possession of personal property for period prescribed as a bar to an action for the recovery thereof. *Durst* v. *Durst*, 225 Md. 175, 169 A. 2d. 755 (1960).
Massachusetts	Mass. Gen. Laws Ann. Title 260, §2A (1986 Supp).	3	Actions of tort; actions of replevin.
	Title 260, §4	2	Actions against sheriffs, constables, or assignees in insolvency for the taking or conversion of personal property. A cause of action for conversion is barred after the lapse of two years from the time of conversion. *Abizaid* v. *Abizaid*, 33 Mass. App., Dec. 1978.

State	Code Section	Years	Language
Michigan	Mich. Comp. Laws Ann. §600.5805(7)	3	Action to recover damages for injury to property.
	§600.5813	6	All other personal actions.
Minnesota	Minn. Stat. Ann. (1996 Pocket Pt.) §541.05(4)	6	Taking, detaining, or injuring personal property, including actions for the specific recovery thereof.
Mississippi	Miss. Code 1972 Ed. §15-1-49	6	All actions for which no other period of limitation is prescribed.
Missouri	Vernon's Ann. Missouri Stat. §516.120(4)	5	Taking, detaining, or injuring any goods or chattel, including actions for the recovery of specific personal property.
Montana	Mont. Code Ann. 1983 Ed. §27-2-207(2)	2	Taking, detaining or injuring any goods or chattel, including actions for the specific recovery of personal property.
Nebraska	Revised Stat. of Neb., 1943 Ed., §25-207(2)	4	Taking, detaining or injuring personal property, including actions for specific recovery of personal property.
Nevada	Nev. Revised Stat. Ann. §11.190(3)(c)	3	Taking, detaining, or injuring personal property, including actions for specific recovery thereof.
New Hampshire	N.H. Rev. Stat. Ann. 1983 Ed. §508:4	6	All personal actions.

State	Code Section	Years	Language
New Jersey	N.J. Stat. Ann. (1985 Pocket Pt.) §2A:14-1	6	Taking, detaining, or converting personal property.
New Mexico	N.M. Stat. Ann., 1978 Ed. §37-1-4.	4	Injuries to property or for the conversion of personal property.
New York	McKinney's CPLR (1986 Pocket Pt.) §214(3)	3	To recover a chattel or damages for the taking or detaining of a chattel.
North Carolina	Gen. Stat. N.C. §1-52(4)	3	Taking, detaining, converting, or injuring any goods or chattel, including action for their specific recovery.
North Dakota	N.D. Century Code (1985 Supp.) §28-01-16(4)	6	Taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.
Ohio	Page's Ohio Rev. Code §2305.09(B)	4	For the recovery of personal property or for taking or detaining it.
Oklahoma	Oklahoma Stat. Ann. (1985 Pocket Pt.) Title 12, §95	2	Taking, detaining, or injuring personal property, including actions for the specific recovery of personal property. Statute of limitation on action to recover stolen personal property in hands of one who in good faith purchased the personalty for value, begins to run from the time latter acquired possession and not from time owner first had

State	Code Section	Years	Language
Oklahoma (contd.)			knowledge of whereabouts of property, provided there was no fraud or attempt at concealment. Riesinger's Jewelers, Inc. v. Roberson, 582 P. 2d. 409 (1978).
Oregon	Oregon Rev. Stat. Ann. (1985 Supp.) §12.080(4)	6	Taking, detaining, or injuring personal property including action for specific recovery thereof.
Pennsylvania	Purdon Pa. Con. Stat. Ann. (1985 Pocket Pt.) §5524(3)	2	Taking, detaining, or injuring personal property, including actions for specific recovery thereof.
Rhode Island	Gen. Laws of R.I., 1985 Ed., §9-1-13(a)	10	All civil actions.
South Carolina	Code of Laws of S.C. §15-3-530(4)	6	Taking, detaining, or injuring any goods or chattel including action for specific recovery of personal property.
South Dakota	S.D. Cod. Laws, 1984 Rev. §15-2-13(4)	6	Taking, detaining, or injuring any goods or chattel including action for specific recovery of personal property.
Tennessee	Tenn. Code Ann., 1980 Ed. §28-3-105(2)	3	Actions for the detention or conversion of property. Cause of action for conversion of personal property accrues at date of conversion, not at the time plaintiff discovered the party guilty of the act. Million v. Medaris, 65 Tenn. 132 (1873).

State	Code Section	Years	Language
Texas	Vernon's Ann. Civil Prac. and Remedies Code, added by Laws of 1985, Chapter 959. §16.003	2	Conversion of personal property, taking, or detaining the personal property of another.
Utah	Utah Code Ann. §78-12-26(2)	3	Taking, detaining or injuring personal property, including actions for specific recovery thereof.
Vermont	Vermont Stat. Ann. Title 12, §512(5)	3	Damage to personal property suffered by the act or default of another.
Virginia	Code of Va., 1984 Replacement §8.01-243(B).	5	Every action for injury to property. Uninterrupted possession of personal property for more than five years is bar to suit by former owner to recover same. Garland v. Enos, 18 Va. (4 Munf.) 504 (1815).
Washington	Rev. Code of Wash. Ann. §4.16.080(2)	3	Taking, detaining, or injuring personal property including action for specific recovery thereof.
West Virginia	W.V. Code, §55-2-12	2	For damage to property.
Wisconsin	West's Wis. Stat. Ann. §893.51	6	Wrongful taking, conversion or detention of personal property.
Wyoming	Wyoming Stat. Ann. §1-3-105(a)(iv)(B)	4	Recovery of personal property or for taking, detaining, or injuring personal property.